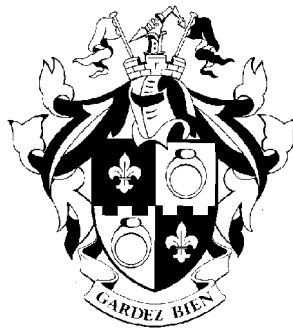


COLLECTIVE BARGAINING LAWS IN MONTGOMERY COUNTY: A LEGISLATIVE HISTORY



OFFICE OF LEGISLATIVE OVERSIGHT
REPORT NUMBER 2009-5

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Leslie Rubin

COLLECTIVE BARGAINING LAWS IN MONTGOMERY COUNTY:

A LEGISLATIVE HISTORY

OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2009-5 / DECEMBER 2, 2008

INTRODUCTION

The Charter of Montgomery County and the Montgomery County Code (Chapter 33) establish the legal framework for collective bargaining with police officers, firefighters, and other County Government employees. The County Charter and County Code define the basic standards and requirements of the County's collective bargaining process, including those relating to:

- Which employees have the right to representation for collective bargaining;
- What matters are subject to or excluded from collective bargaining;
- Elections of employee organizations to represent employees in collective bargaining;
- The process of resolving disputes that arise during collective bargaining; and
- The roles of the County Executive and the County Council.

This Office of Legislative Oversight (OLO) report responds to the Montgomery County Council's request to compile the legislative history of the County's collective bargaining laws. Specifically, the Council asked OLO to summarize the provisions of the original bills that established collective bargaining and all subsequent amendments to the collective bargaining laws in Chapter 33.

Based on the legislative record, including public hearing testimony and minutes of Council worksessions, the Council also asked OLO to describe the various arguments presented for and against the original laws and amendments considered since the law's inception.

OLO staff researched the legislative history of the collective bargaining laws in County Code Chapter 33 from information contained the County Council's official bill files. The bill files, maintained by the County Council's Legislative Information Services office, contain: Committee and full Council worksession packets, other staff memos, bill drafts, minutes of Committee and full Council sessions, copies of correspondence received by the Council, and public hearing records (which included transcripts until 1991).

The first two chapters of this report contain general background information and include definitions of terms used in the report. Chapter III (beginning on page 7) provides a summary of the current collective bargaining laws and an overview of the 29 bills that make up the laws' legislative history. The remaining chapters provide a more detailed review of the individual bills that established and amended the legal framework for collective bargaining between the County Government and employee organizations representing police officers, firefighters, and other County Government employees.

An Appendix to the report, which includes many of the source documents referenced in the report, is available online at www.montgomerycountymd.gov/olo.

For a complete copy of OLO Report 2009-5, go to: www.montgomerycountymd.gov/olo.
This document is available in alternative formats upon request.

OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2009-5

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Appendix B contains many of the source documents from the official bill files that OLO used in the course of researching the legislative history of the collective bargaining laws. Appendix B is available online at www.montgomerycountymd.gov/olo.

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CHAPTER I. Authority, Scope, and Organization of Report

I. AUTHORITY

Council Resolution 16-673, *Fiscal Year 2009 Work Program of the Office of Legislative Oversight*, adopted July 29, 2008.

II. SCOPE AND PURPOSE

The Montgomery County Charter and the Montgomery County Code (Chapter 33) establish the legal framework for the collective bargaining process for police officers, firefighters, and other County Government employees. The County Charter and County Code define the basic standards and requirements of the County's collective bargaining process, including those relating to:

- Which employees have the right to representation for collective bargaining;
- What matters are subject to or excluded from collective bargaining;
- Elections of employee organizations to represent employees in collective bargaining;
- The process for resolving disputes that arise during collective bargaining; and
- The roles of the County Executive and the County Council.

This Office of Legislative Oversight (OLO) report responds to the Montgomery County Council's request to compile the legislative history of the County's collective bargaining laws. Specifically, the Council asked OLO to summarize the provisions of the original bills that established collective bargaining and all subsequent amendments to the collective bargaining laws in Chapter 33.

Based on the legislative record, including public hearing testimony and minutes of Council worksessions, the Council also asked OLO to describe the various arguments presented for and against the original laws and amendments considered since the law's inception.

III. ORGANIZATION

Chapter II, Introduction to Collective Bargaining, provides a brief description of what "collective bargaining" is in the public sector, and offers definitions of selected terms used throughout this report.

Chapter III, Overview of Montgomery County's Labor Relations Laws, provides a summary of the current collective bargaining laws and an overview of the 29 bills that make up the legislative history of County Code Chapter 33. Chapter III also identifies key issues and themes discussed by the Council over the years during worksessions on the laws surrounding collective bargaining. This chapter includes summary tables of the different bills considered over the years and a list of the individuals and organizations referenced in later chapters.

Chapter IV, “Meet and Confer” Process, reviews the legislative history of Bill 11-76, the County’s first labor relations bill. Bill 11-76 established a “meet and confer” process. “Meet and confer” is a process which requires employer and employee representatives to talk about terms and conditions of employment, but in which management retains the authority to make final decisions.

The next three chapters review the legislative history of the Charter amendments and bills that established collective bargaining for police officers, firefighters, and other County Government employees.

- **Chapter V** reviews the legislation enacted in 1982 (Bill 71-81) that established collective bargaining for police officers;
- **Chapter VI** reviews the legislation enacted in 1986 (Bill 19-86) that established collective bargaining for other County Government employees, and the legislation enacted in 2000 (Bill 26-99) changing the impasse resolution process to binding arbitration; and
- **Chapter VII** reviews the legislation enacted in 1987 (Emergency Bill 48-87) that established a separate collective bargaining unit for firefighters; and the legislation enacted in 1996 (Emergency Bill 21-96) that established a separate collective bargaining process for firefighters.

The final five chapters of the report review bills that proposed amendments to the laws that established collective bargaining in Montgomery County:

- **Chapter VIII** reviews bills that added groups of employees to collective bargaining units;
- **Chapter IX** reviews bills that amended the processes, procedures, and dates for collective bargaining;
- **Chapter X** reviews bills that amended the “Meet and Confer” law on compensation issues: annual employee cost of living increases; and maximum salaries for top level employees;
- **Chapter XI** reviews bills that made technical changes to the underlying law; and
- **Chapter XII**, reviews the five bills to amend Chapter 33 that were introduced by the Council, but not passed.

This report has two appendices. Appendix A is a separate document that includes relevant sections of the Charter of Montgomery County and the final versions of the bills discussed in this report. Appendix B contains many of the source documents from the official bill files that OLO used in the course of researching the legislative history of the collective bargaining laws. Appendix B is available online at www.montgomerycountymd.gov/olo. A list of documents in Appendix B can be found in the Table of Contents at page vi.

IV. METHODOLOGY

Leslie Rubin, Legislative Analyst in the Office of Legislative Oversight, conducted this study. OLO staff members Kristen Latham, Jennifer Renkema, Teri Busch, and Karen Orlansky assisted with various research and editing tasks associated with production of the final report.

OLO staff researched the legislative history of the collective bargaining laws in County Code Chapter 33 from information contained the County Council's official bill files. The bill files, maintained by the County Council's Legislative Information Services office, contain: Committee and full Council worksession packets, other staff memos, bill drafts, minutes of Committee and full Council sessions, copies of correspondence received by the Council, and public hearing records. The bill files included public hearing transcripts until July 1991, when as a cost-cutting measure, the Council eliminated the routine procedure of producing public hearing transcripts for the bill files.

OLO staff compiled information about the history of the relevant County Charter amendments from documents contained in Council staff files. OLO's research included reviewing Council Resolutions, minutes, staff packets, and proceedings from the Charter Review Commission.

In general, OLO found that the Council's bill files contained all the relevant types of documents listed above. In a number of cases, however, it was apparent that some documents were missing from the official file – e.g., a bill draft, a staff memo, a worksession packet. In the following chapters, OLO notes the absence of specific items to the reader in the discussion of specific bills.

OLO circulated chapters of the report to the Council's legislative attorneys and the Office of the County Attorney for technical review. The final report incorporates all comments received.

V. ACKNOWLEDGEMENTS

OLO appreciates the assistance of Council staff, and especially the Legislative Information Services staff, for assistance with compiling the legislative records needed for this review. In particular, OLO thanks Robert Drummer; Justina Ferber; Minna Davidson; Karen Pecoraro; Lynn Guthrie; Annette Delgado, and Bart Friedman.

OLO owes special thanks to Senior Legislative Attorney Michael Faden, and Associate County Attorney David Stevenson and Division Chief Edward Lattner for taking the time to review and comment on chapter drafts.

CHAPTER II. Introduction to Collective Bargaining

In the most generic sense, **collective bargaining** is the coming together of representatives of employees and employers (management) to negotiate the terms and conditions of employment. Issues that are typically discussed and negotiated in collective bargaining include: wages, benefits, working conditions, and workplace rules. Agreements that result from the collective bargaining process are generally written down in a **collective bargaining agreement** - a contract signed by the employees' representative and management that governs the relationship between employees and an employer for a certain period of time.

The history of collective bargaining in the United States dates back to the late 19th century, when workers started to organize together in an effort to obtain better working conditions. In 1935, Congress approved the Wagner Act – commonly known as the National Labor Relations Act (NLRA) – which outlines basic rights of both workers and employers in the private and nonprofit sectors. Among other things, the federal NLRA grants virtually all nonsupervisory employees in the private and nonprofit sectors the right to join together in unions and to bargain collectively.¹

In comparison, federal law does not regulate collective bargaining for local government employees.² While public employees share the constitutional right (under the First Amendment) to organize and join unions, no federal law provides collective bargaining rights for local employees and their unions. Although some federal laws affect public sector labor relations, the terms surrounding collective bargaining for state and local government employees are governed by a combination of State and/or local laws of the employing jurisdiction.³

Under Maryland State law, only teachers have the right to collectively bargain.⁴ The collective bargaining rights of other public sector employees in Maryland (including police and firefighters) are subject to laws enacted by County or municipal jurisdictions. This report describes the history of the local laws governing collective bargaining for employees of the Montgomery County, Maryland Government.

For readers who desire more background on the history and legal framework for public sector collective bargaining, and a general overview of the collective bargaining process, the appendix to this report (which will be available online at www.montgomerycountymd.gov/olo) contains a copy of the chapter titled “Labor-Management Relations and Collective Bargaining,” taken from ICMA’s 2004 book *Human Resource Management in Local Government: An Essential Guide*.

Table 2-1 (on the next page) defines common labor relations terms and is included as a reference for the reader. Table 2-2 defines terms applicable to labor relations in Montgomery County.

¹ See John Kenny and Linda Kahn, *Primer of Labor Relations* at p. 19-20 (1989).

² See Richard Kearney and Barry Feldman, “Labor-Management Relations and Collective Bargaining,” in *Human Resource Management in Local Government: An Essential Guide* at p. 93 (2004).

³ Ibid. at p. 94.

⁴ Ibid. at p. 95.

Table 2-1. Definitions of Selected Labor Relations Terms

| Term | Definition |
|---|---|
| Arbitration (including binding arbitration) | A method of deciding a controversy where the parties have agreed in advance to accept the decision (or “award”) of a neutral third party. |
| Collective bargaining | A process where representatives of an employer (management) meet with representatives of employees (the union) to establish the terms and conditions of employment for the employees. |
| Fact-finding | The job determining the facts relevant to decide a controversy. |
| Grievance | An employee complaint or an allegation by an employee, union, or employer that a collective bargaining contract has been violated. |
| Impasse | When parties attempting to negotiate an agreement are unable to reach an agreement and become deadlocked. |
| Lockout | A situation where an employer prevents some or all employees from working to put economic pressure on the employees to accept of the employer’s terms. |
| Mediation | A process where a neutral third-party aims to assist two (or more) parties reach an agreement. |
| Meet and confer | A process where employee and employer representatives meet to talk about terms and conditions of employment, but management has the authority to make final decisions. |
| Strike | A work stoppage caused by the mass refusal by employees to work as a form of economic pressure on employers to accept the employees’ terms. |
| Union | An organization of workers who have banded together to achieve common goals in key areas such as wages, hours, and working conditions. |

Table 2-2. Definitions of Selected Labor Relations Terms Applicable to Montgomery County

| Term | Definition |
|---|---|
| Certified representative | An employee organization selected in accordance with County law (Chapter 33) to represent an employee bargaining unit. |
| Effects bargaining | “Effects bargaining” refers to the requirement in the Police Labor Relations law, Chapter 33, Article V, requiring the County to bargain over the effects on employees of the employer’s exercise of “employer rights” listed in the law. In comparison, the County Collective Bargaining law and Fire and Rescue Collective Bargaining law both limit “effects bargaining” to the “amelioration of the effect on employees when the exercise of employer rights ... causes a loss of existing jobs in the unit.” |
| Emergency or Expedited Bill | The County Charter (Section 111) defines “expedited legislation” as legislation that is declared by the Council to be “necessary for the immediate protection of the public health, safety, or interest.” An expedited bill requires the affirmative vote of at least six members of the Council. Expedited legislation can go into effect immediately. |
| Employee organization | In Montgomery County, three employee organizations were selected in accordance with County law (Chapter 33) to represent employees: <ul style="list-style-type: none">• Fraternal Order of Police, Lodge 35;• International Association of Fire Fighters Local 1664; and• United Food and Commercial Workers Local 1994, Municipal and County Government Employees Organization (MCGEO). |
| Employer | Refers to the County Executive or the County Executive’s designees. |
| Impasse Neutral | An individual, selected by agreement between the County Government and a certified employee organization, who is responsible for mediating and arbitrating collective bargaining disputes between the County Government and that certified employee organization. Under the law, the employer and the certified representative equally share the fees, costs, and expenses of the impasse neutral. |
| Labor Relations Administrator or Permanent Umpire | The individual appointed by the County Executive and confirmed by the Council to carry-out responsibilities related to the certification of an employee organization and the investigation of charges of engaging in prohibited practices under the collective bargaining laws. |
| Parties | The entities engaged in the collective bargaining process. In the Montgomery County context, this typically means the County Executive (or the County Executive’s designees) and one of the County’s certified employee organizations. |

CHAPTER III. Overview of Montgomery County’s Labor Relations Laws

This chapter provides an outline of Montgomery County’s current labor relations laws and a summary look at the bills that make up their history. It also identifies four major issues discussed during the County Council’s debates over labor relations laws, and provides a road map to the more detailed legislative history contained in the remaining chapters of this report. Chapter III is organized as follows:

- Section I, Outline of Current Labor Relations Laws;
- Section II, Legislative History in Brief;
- Section III, Major Issues; and
- Section IV, Road Map.

I. OUTLINE OF CURRENT LABOR RELATIONS LAWS

Montgomery County’s labor relations laws are codified in four articles in Chapter 33 of the Montgomery County Code. These articles are:

- Article IV. Employer – Employee Relations;
- Article V. Police Labor Relations;
- Article VII. County Collective Bargaining; and
- Article X. Fire and Rescue Collective Bargaining.¹

Articles V, VII, and X establish the framework for collective bargaining and for developing binding collective bargaining agreements between County Government representatives (the employer) and the employee organizations elected to represent police officers, firefighters, and other County Government employees (the employee unions). With some exceptions (e.g., the language surrounding “effects bargaining”), the collective bargaining laws all establish similar collective bargaining processes and address similar topics.

Article IV, Employer – Employee Relations, establishes a process for certain employees to have an ongoing dialogue with County Government representatives about personnel policies and practices and other matters affecting working conditions (a “meet and confer” process). Unlike the collective bargaining process, a “meet and confer” dialogue does not result in a binding contract between the parties.

Table 3-1 (on the following page) lists the sections of each collective bargaining law in Chapter 33. Brief explanations of the topics covered in the three laws are provided below the table.

¹ These articles are in the following sections of Chapter 33: Employer – Employee Relations (§§ 33-62 to 33-74); Police Labor Relations (§§ 33-75 to 33-85); County Collective Bargaining (§§ 33-101 to 33-112); and Fire and Rescue Collective Bargaining (§§ 33-147 to 33-157).

Table 3-1. Comparison of Code Sections in Montgomery County Collective Bargaining Laws

| Article V. Police Labor Relations | | Article VII. County Collective Bargaining | | Article X. Fire and Rescue Collective Bargaining | |
|-----------------------------------|---|---|--|--|--|
| Section # | Section Title | Section # | Section Title | Section # | Section Title |
| § 33-75 | Declaration of policy | § 33-101 | Declaration of policy | § 33-147 | Declaration of policy |
| § 33-76 | Definitions | § 33-102 | Definitions | § 33-148 | Definitions |
| § 33-77 | Permanent umpire | § 33-103 | Labor relations administrator | § 33-149 | Labor Relations Administrator |
| § 33-78 | Employee rights | § 33-104 | Employee rights | § 33-150 | Employee rights |
| | | § 33-105 | Units for collective bargaining | | |
| § 33-79 | Selection, certification and decertification procedures | § 33-106 | Selection, certification, and decertification procedures | § 33-151 | Selection, certification, and decertification procedures |
| § 33-80 | Collective bargaining | § 33-107 | Collective bargaining | § 33-152 | Collective bargaining |
| § 33-81 | Impasse procedure | § 33-108 | Bargaining, impasse, and legislative procedures | § 33-153 | Bargaining, impasse, and legislative procedures |
| § 33-82 | Prohibited practices | § 33-109 | Prohibited practices | § 33-154 | Prohibited practices |
| § 33-83 | Expression of views | § 33-110 | Expression of views | § 33-155 | Expression of views |
| § 33-84 | Strikes or lockouts | § 33-111 | Strikes and lockouts | § 33-156 | Strikes and lockouts |
| § 33-85 | Effect of prior enactments | § 33-112 | Effect of prior enactments | § 33-157 | Effect of prior laws and regulations |

| Topic | Description |
|---|---|
| Employees with Collective Bargaining Rights | Each law defines the group(s) of employees that have the right to representation by an employee organization, which will bargain collectively with County representatives over, among other things, employee wages, benefits, and working conditions. |
| Subjects for Collective Bargaining | Each law identifies mandatory subjects over which County Government representatives must bargain with an employee organization that represents County employees. |
| Employer Rights | Each law identifies a list of “employer rights” over which the parties are prohibited from bargaining. |
| Process for Collective Bargaining | Each law establishes a process, including a timeline, for the parties to follow in any year in which they must negotiate a collective bargaining agreement. |
| Impasse Resolution Procedures | Each law establishes a process to resolve disagreements between the parties over terms of a collective bargaining agreement (impasses). |
| Employee Rights | Each law defines a list of rights that employees have under the law (e.g., the right to join an employee organization). |
| Prohibited Practices | Each law defines a list of practices that employees, an employee organization, or the employer are prohibited from engaging in (e.g., strikes and lockouts). |
| Elections | Each law establishes a process for employees to elect an employee organization to collectively bargain for them with management. |

II. LEGISLATIVE HISTORY IN BRIEF

A. Summary Facts about Labor Relation Bills, 1976-2007

Between 1976 and 2007, the County Council considered 29 bills concerning labor relations. The Council approved 23 of the 29 bills, disapproved one bill, and adopted a competing bill in one instance. There is no record of Council action on the remaining four bills. Of the 23 bills that became law:

- Six bills concerned the “Meet and Confer” law and 17 related to collective bargaining;
- Four bills expanded the groups of employees who could be represented for collective bargaining purposes;
- Five bills addressed the process for resolving disagreements during the collective bargaining process (“impasses”);
- Three bills directly resulted from the voters’ approval of a Charter amendment;
- 12 bills were considered and adopted by the Council as emergency/expedited legislation;
- 15 bills were introduced by the Council at the request of the County Executive;
- 15 bills were approved unanimously by the Council; and
- All bills but one were signed by the County Executive.

Table 3-2 (on the next page) lists the 23 bills enacted by the Council. For each piece of legislation, the table contains the date of Council approval and a brief statement of the bill’s subject matter. Table 3-3 (page 11) lists the six bills introduced but not enacted by the Council.

Table 3-2. Summary of Labor Relations Bills Enacted by the County Council, 1976-2007

| Bill Number | Emergency/ Expedited Bill? | Date Enacted | Bill Subject |
|-------------|----------------------------------|--------------------------|--|
| 11-76 | | 12-14-1976 | Established “Meet and Confer” Law |
| 37-78 | | 11-14-1978 11-17-1978 | Established annual cost-of-living adjustment for County Government employees |
| 23-79 | | 10-2-1979 | Removed minimum voting requirement to elect an employee organization under “meet and confer” law |
| 16-81 | ✓ | 5-15-1981 | Established maximum salary levels for certain County employees |
| 18-81 | ✓ | 12-1-1981 | Changed name of Personnel Board to Merit System Protection Board |
| 71-81 | | 4-6-1982 | Established Police Labor Relations law – collective bargaining for police officers |
| 3-82 | | 3-30-1982 | Amended section of law establishing maximum salary levels for certain County employees |
| 24-82 | ✓ | 6-8-1982 | Changed dates in Police Labor Relations law |
| 13-83 | ✓ | 4-5-1983 | Amended section of law establishing maximum salary levels for certain County employees |
| 46-83 | | 12-6-1983 | Adopted uniform procedures for promulgating Executive Regulations |
| 19-86 | | 6-24-1986 | Established County Collective Bargaining law – collective bargaining for County Government employees (excluding police officers and fire fighters) |
| 48-87 | ✓ | 11-17-1987 | Established Fire and Rescue collective bargaining unit in County Collective Bargaining law |
| 3-93 | ✓ | 3-2-1993 | Revises certain deadlines in Police Labor Relations law and County Collective Bargaining law |
| 19-94 | ✓ | 7-5-1994 | Changed name of Personnel Office to Office of Human Resources |
| 21-96 | ✓ | 7-23-1996 | Established Fire and Rescue Collective Bargaining law – separate collective bargaining process for career Fire and Rescue employees |
| 26-99 | | 3-7-2000 | Established binding arbitration process in County Collective Bargaining law |
| 10-00 | | 6-6-2000 | Added police sergeants to bargaining unit in Police Labor Relations law |
| 9-01 | | 5-7-2002 | Added temporary, seasonal, and substitute employees to bargaining units in County Collective Bargaining law |
| 13-01 | | 7-17-2001 | Added certain Fire and Rescue lieutenants and captains to bargaining unit in Fire and Rescue Collective Bargaining law |
| 30-03 | ✓ | 9-30-2003 | Revised certain procedures and practices in the three collective bargaining laws |
| 19-04 | ✓ | 7-13-2004 | Created process to resolve bargaining impasses over reopener issues and over “effects bargaining” in Police Labor Relations law |
| 11-05 | ✓ | 6-28-2005 | Added uniformed sergeants in Department of Correction and Rehabilitation to bargaining unit in County Collective Bargaining law |
| 2-07 | ✓ | 2-27-2007 | Clarified procedure for filling vacancies in position of Permanent Umpire or Labor Relations Administrator |

**Table 3-3. Summary of Labor Relations Bills
Introduced, but Not Enacted by the County Council**

| Bill Number | Subject |
|--------------------|---|
| 23-76 | Establishing a “meet and confer” process |
| 9-85 | Adding police sergeants to bargaining unit in Police Labor Relations law |
| 2-88 | Removing pensions as bargaining subject under Police Labor Relations law and County Collective Bargaining law |
| 29-94 | Establishing binding arbitration for firefighters only under the County Collective Bargaining law |
| 45-97 | Established binding arbitration process in County Collective Bargaining law |
| 2-06 | Allowing issue-by-issue fact finding under impasse resolution process in County Collective Bargaining law |

B. From “Meet and Confer” to Collective Bargaining

In December 1976, the County Council enacted legislation (Bill 11-76) to establish a “meet and confer” process that required County Government representatives to meet at least twice a year with employee organizations elected by groups of employees to represent those groups. The “Meet and Confer” law, which required employer/employee meetings but maintained management’s decision-making rights, served as the precursor to the County’s collective bargaining process.

In 1980 and 1984, Montgomery County voters approved amendments to the County Charter, which led to the Council’s introduction and subsequent approval of legislation to establish collective bargaining, first for police officers and then for other County employees. Specifically:

- In the November 1980 general election, County voters approved a ballot question sponsored by a group of police officers that added a new section to the Charter requiring the Council to enact a collective bargaining law for police officers with binding arbitration. In April 1982, the Council adopted the Police Labor Relations law (Bill 71-81), which established the basic collective bargaining process for police officers.
- In November 1984, voters approved another Charter amendment (sponsored by the Council), this time authorizing but not requiring the Council to enact collective bargaining legislation for other County employees. In 1986, the Council adopted the County Collective Bargaining law, which established the basic collective bargaining process for other County employees. The legislation (Bill 19-86) put into place a process for collective bargaining that was similar (although not identical) to the one established for police officers.

In comparison, the law governing collective bargaining for Montgomery County career firefighters did not originate with a Charter amendment. In November 1987, prompted by separate legislation enacted in October 1987 that transferred employment of career firefighters from the independent fire corporations to the County merit system, the Council enacted emergency legislation to establish a separate collective bargaining unit for firefighters under the County Collective Bargaining law.

Seven years later, a group of Montgomery County career firefighters successfully placed a question on the November 1994 general election ballot to add a new section to the County Charter requiring collective bargaining with binding arbitration for firefighters. Following approval of this ballot question by voters, the Council enacted legislation (Bill 21-96) to implement that new section of the Charter.

Over the years, the Council has adopted various amendments to Chapter 33. The following section reviews some of the recurring issues discussed during the Council's debates over collective bargaining legislation. While the Council has approved some significant amendments to the initial collective bargaining laws, (e.g., adding groups of employees eligible for collective bargaining representation; modifying the process for resolving collective bargaining disputes), what is also notable is how much today's collective bargaining laws have not changed since they were originally adopted.

III. MAJOR ISSUES

The legislative history of labor relations in Montgomery County reveals a number of recurring issues and themes to the County Council's discourse on labor relations laws since the mid-1970s. This section reviews four significant issues that the Council discussed when enacting the first labor relations laws. In some cases, the Council revisited these issues and subsequently adopted amendments to Chapter 33; in other cases, the current law reflects the law as originally enacted. The four issues – posed as questions debated by the Council over the years – are:

- Which employees should be eligible to join an employee organization and collectively bargain?
- What topics should be subject to collective bargaining?
- How should parties resolve disputes that arise during collective bargaining?
- What should be the role of the County Council in the collective bargaining process?

A. Which employees should be eligible to join an employee organization and collectively bargain?

One of the recurring issues debated by the Council has been which groups of employees should be eligible to join an employee organization and bargain with the County over issues such as wages, benefits, and working conditions. Over the years, the Council has adopted amendments to the County's collective bargaining laws that expanded the groups (and absolute numbers) of employees entitled to representation.

Original Laws. As adopted by the Council in 1976, the "Meet and Confer" law (the precursor to the collective bargaining laws) defined an "employee" entitled to representation by an employee organization as "any County merit system employee working on a continuous full-time, career or part-time, career basis" except:

- Confidential aides to elected officials;
- All non-merit system employees;
- All heads of principal departments, offices, and agencies;

- Deputy or assistant department heads;
- Employees that provide direct staff or administrative support to a department director or to a deputy or assistant director in a director's immediate office;
- Employees who report directly to or whose immediate supervisor is the County Executive, County Council, Councilmembers, or the CAO, and principal aides to those individuals;
- Employees of the Office of the County Attorney;
- Employees of the Office of Budget and Research;
- Employees of the Office of Employee Relations;
- Employees of the Personnel Board;
- Employees of the Personnel Office; and
- Heads of several specified offices, divisions, and sections in the Department of Transportation, and positions in other departments and offices with "a similar degree of personnel management responsibilities" as determined by the CAO.

In 1986, the Council took the same approach when defining the group of County Government employees entitled to collective bargaining representation (Bill 19-86). In addition to the employees identified in the "Meet and Confer law," the County Collective Bargaining law also excluded employees in the Office of Intergovernmental Relations and employees in the Management Leadership Service.

When the Council enacted the Police Labor Relations law in April 1982 (Bill 71-81), the Council and the County Executive both supported limiting eligibility for collective bargaining representation to non-supervisory employees. Accordingly, as initially adopted in 1982, the Police Labor Relations law limited collective bargaining to police officers below the rank of sergeant.

In November 1987, when the Council amended the law to add a separate collective bargaining unit for firefighters under the County Collective Bargaining law, the law limited participation to Master Firefighters/Rescuers and Firefighters/Rescuers I, II, and III (Bill 48-87). When the Council created a separate collective bargaining law for firefighters in July 1996, the Council limited participation to the same classifications, but only to employees below the rank of lieutenant (Bill 21-96).

Amendments that Added Employee Groups. In 1985, the Council introduced, but never acted on a bill that would have added police sergeants to the collective bargaining unit in the Police Labor Relations law (Bill 9-85).

Between 2000 and 2005, the Council introduced and passed four bills that gave collective bargaining rights to more than 2,700 additional employees. Three of these bills also extended collective bargaining rights to supervisors, and included supervisors in collective bargaining units with employees that they supervised. Listed chronologically as passed by the Council, these bills added:

- Police sergeants to the bargaining unit in the Police Labor Relations law (Bill 10-00, adopted June 2000);
- Fire and Rescue lieutenants and captains to the collective bargaining unit in the Fire and Rescue Collective Bargaining law (Bill 13-01, adopted July 2001);
- Temporary, seasonal, and substitute employees, and certain employees in grades 27 and above to the bargaining units in the County Collective Bargaining law (Bill 9-01, adopted May 2002); and
- Uniformed sergeants in the Department of Correction and Rehabilitation to a bargaining unit in the County Collective Bargaining law (Bill 11-05, adopted June 2005).

B. What topics should be subject to collective bargaining?

Beginning with the Police Labor Relations law in 1982, the Council engaged in extensive debate over which topics the County Government should be required to bargain with an employee organization. In each of the three collective bargaining laws, the Council legislated a list of bargainable subjects and a corresponding list of “employer rights” that could not be bargained over.

The Council has not changed the mandatory bargaining topics or the employer rights itemized in any of the collective bargaining laws since they were enacted. In 1988, the Council introduced, but did not enact, legislation (Bill 2-88) that would have removed pensions and retirement benefits from the list of mandatory bargaining subjects from the Police Labor Relations law and the County Collective Bargaining law.

The three tables beginning on page 15 list the collective bargaining topics and employer rights listed in the County’s collective bargaining laws. The language across the three units is similar, but not identical. The topics and rights in the Police Labor Relations law (Table 3-4) are the same as when the law was adopted in 1982; the topics and rights in the County Collective Bargaining law (Table 3-5) are the same as when the law was adopted in 1986; and the topics and rights in the Fire and Rescue Collective Bargaining law (Table 3-6) are the same as when the law was adopted in 1996.

In Bill 71-81, the legislation that established collective bargaining for police officers (the Police Labor Relations law), the Council identified seven topics over which the County had to bargain with an employee organization and ten “employer rights” that were not subject to bargaining. The adopted version of Bill 71-81 included an “effects bargaining” clause, which required the County to bargain with an employee organization representing police officers over “[t]he effect on employees of the employer’s exercise of [employer] rights.”

When the Council reviewed Bill 19-86, which created the County Collective Bargaining law, the Montgomery County Government Employees Association (MCGEO) urged the Council to include the same “effects bargaining” clause from the Police Labor Relations law in Bill 19-86. County Executive Charles Gilchrist recommended against including this language. In the final version of the bill adopted by the Council, the Council included language that required the County to bargain with an employee organization over the “[a]melioration of the effect on employees when the exercise of employer rights ... causes a loss of existing jobs in the unit.”

When the Council reviewed Bill 21-96, which created a separate collective bargaining law for firefighters (the Fire and Rescue Collective Bargaining law), the Council included parallel language from the County Collective Bargaining law requiring the County to bargain with an employee organization over the “[a]melioration of the effect on employees when the exercise of employer rights ... causes a loss of existing jobs in the unit.”

Table 3-4. Collective Bargaining Topics and Employer Rights in the Police Labor Relations Law

| Topics Subject to Collective Bargaining | Employer Rights |
|--|--|
| <ul style="list-style-type: none">• Salary and wages , provided, however, that salaries and wages shall be uniform for all employees in the same classification• Pension and retirement benefits for active employees only• Employee benefits (e.g., insurance, leave, holidays, vacation)• Hours and working conditions, including the availability and use of personal patrol vehicles• Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum• Matters affecting the health and safety of employees• The effect on employees of the employer’s exercise of [employer] rights enumerated [in the next column] | <ul style="list-style-type: none">• To determine the overall budget and mission of the employer and any agency of County Government• To maintain and improve the efficiency and effectiveness of operations• To determine services to be rendered and operations to be performed• To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted, and the location of facilities• To direct or supervise employees• To transfer, assign, and schedule employees• To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive• To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement• To take actions to carry out the mission of government in situations of emergency• To hire, select and establish the standards governing promotion of employees and to classify positions |

Table 3-5. Collective Bargaining Topics and Employer Rights in the County Collective Bargaining Law

| Topics Subject to Collective Bargaining | |
|---|--|
| <ul style="list-style-type: none"> • Salary and wages, including the increase and/or decrease in the salary and wages budget, and the percentage of any increase in the salary and wages budget that will be devoted to merit increments and cash awards, provided that salaries and wages shall be uniform for all employees in the same classification; • Pension and other retirement benefits shall be negotiable, for active employees only, one year after the effective date of this article; • Employee benefits such as insurance, leave, holidays, and vacations; • Hours and working conditions; | <ul style="list-style-type: none"> • Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include: <ul style="list-style-type: none"> ○ Binding third party arbitration, provided that the arbitrator shall have no authority to amend, add to, or subtract from the provisions of the collective bargaining agreement; and ○ Provisions for exclusivity of forum; • Matters affecting the health and safety of employees; and • Amelioration of the effect on employees when the exercise of employer rights ... causes a loss of existing jobs in the unit. |
| Employer Rights | |
| <ul style="list-style-type: none"> • To determine the overall budget and mission of the employer and any agency of County government; • To maintain and improve the efficiency and effectiveness of operations; • To determine the services to be rendered and the operations to be performed; • To determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are to be conducted and the location of facilities; • To direct and supervise employees; • To hire, select, and establish the standards governing promotion of employees, and classify positions; • To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive; • To take actions to carry out the mission of government in situations of emergency; • To transfer, assign, and schedule employees; • To determine the size, grades, and composition of the work force; • To set the standards of productivity and technology; • To establish employee performance standards and evaluate employees, except that evaluation procedures shall be a subject for bargaining; | <ul style="list-style-type: none"> • To make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards; • To introduce new or improved technology, research, development, and services; • To control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsections (a)(6) of this section [regarding matters affecting the health and safety of employees]; • To maintain internal security standards; • To create, alter, combine, contract out, or abolish any job classification, department, operation, unit or other division or service, provided that no contracting of work which will displace employees may be undertaken by the employer unless 90 days prior to signing the contract, or such other date of notice as agreed by the parties, written notice has been given to the certified representative; • To suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter section 404, any such action may be subject to the grievance procedure set forth in the collective bargaining agreement; • To issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this law, Federal or State law, or the terms of the collective bargaining agreement. |

Table 3-6. Collective Bargaining Topics and Employer Rights in the Fire and Rescue Collective Bargaining Law

| Topics Subject to Collective Bargaining | |
|--|---|
| <ul style="list-style-type: none"> • Salary and wages, including the percentage of the increase in the salary and wages budget that is devoted to merit increments and cash awards, but salaries and wages must be uniform for all employees in the same classification; • Pension and other retirement benefits for active employees only; • Employee benefits such as, but not limited to, insurance, leave, holidays, and vacations; • Hours and working conditions; | <ul style="list-style-type: none"> • Procedures for the orderly processing and settlement of grievances concerning the interpretation and implementation of any collective bargaining agreement, which may include: <ul style="list-style-type: none"> ○ Binding third party arbitration, but the arbitrator has no authority to amend, add to, or subtract from any provision of the collective bargaining agreement; and ○ Provisions for exclusivity of forum; • Matters affecting the health and safety of employees; and • Amelioration of the effect on employees when the exercise of employer rights ... causes a loss of existing jobs in the unit. |
| Employer Rights | |
| <ul style="list-style-type: none"> • Determine the overall budget and mission of the employer and any agency of County government; • Maintain and improve the efficiency and effectiveness of operations; • Determine the services to be rendered and the operations to be performed; • Determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are conducted, and the location of facilities; • Direct and supervise employees; • Hire, select, and establish the standards governing promotion of employees, and classify positions; • Relieve employees from duties because of lack of work or funds, or when the employer determines continued work would be inefficient or nonproductive; • Take actions to carry out the mission of government in emergency situations; • Transfer, assign, and schedule employees; • Determine the size, grades, and composition of the work force; • Set the standards of productivity and technology; • Establish employee performance standards and evaluate employees, but evaluation procedures are subject to bargaining; | <ul style="list-style-type: none"> • Make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards; • Introduce new or improved technology, research, development, and services; • Control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsections (a)(6) of this section [regarding matters affecting the health and safety of employees]; • Maintain internal security standards; • Create, alter, combine, contract out, or abolish any job classification, department, operation, unit or other division or service, but the employer must not contract work which will displace employees unless it gives written notice to the certified representative 90 days before signing the contract or other notice agreed by the parties; • Suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter section 404, any such action may be subject to the grievance procedure included in a collective bargaining agreement; and • Issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this Article, Federal or State law, or the terms of a collective bargaining agreement. |

C. How should parties resolve disputes that arise during collective bargaining?

Another collective bargaining issue debated by the Council multiple times over the years has been the process for resolving disputes or “impasses” that arise when the County and an employee organization are bargaining and cannot reach an agreement on a subject. Today, the three collective bargaining laws all require the same binding arbitration process as the mechanism for resolving impasses.

Binding arbitration is a process where parties agree to submit their disagreements to a neutral third party who has the power to choose a solution and impose the decision on the parties. Under the County’s current binding arbitration process (contained in all three collective bargaining laws), when the County and an employee organization reach an impasse, each is required to submit a complete offer to the arbitrator addressing all items not agreed upon. The arbitrator must select one complete package or the other as the final package and cannot alter any terms in the selected package. When combined with items the parties did agree upon, this becomes the final collective bargaining agreement between the County and an employee organization.

As adopted by the voters, the County Charter provisions that address collective bargaining for police officers and firefighters both require “binding arbitration” to be included in the law. The impasse procedure adopted in the original Police Labor Relations law (enacted by the Council in 1982) was a combination of mediation and binding arbitration. In 1996, the Council adopted the same combination of mediation and binding arbitration in the Fire and Rescue Collective Bargaining law.

In comparison to the Charter provisions for the public safety employees, the section of the Charter authorizing collective bargaining for other County Government employees did not require the Council to include binding arbitration. Consequently, when the Council enacted the County Collective Bargaining law in 1986, the Council chose to include mediation and fact-finding as the impasse resolution process. The fact-finding process required a neutral third party to review disputes between the County and an employee organization, but only gave the neutral party the authority to recommend solutions, which were not binding on the County or the employee organization.

In the 1990s, the Council reviewed, but did not enact, two separate bills addressing binding arbitration. In 1994, when firefighters were still in a bargaining unit under the County Collective Bargaining law (and its fact-finding process), Bill 29-94 sought to establish a binding arbitration process for firefighters only. Three years later, the Council reviewed but did not enact Bill 45-97, which would have established binding arbitration for all employees covered under the County Collective Bargaining law.

Firefighters received the right to binding arbitration when the Council enacted the Fire and Rescue Collective Bargaining law in 1996, which created a separate collective bargaining process exclusively for firefighters. Establishing binding arbitration as the impasse resolution process for other County Government employees under the County Collective Bargaining law occurred four years later, when the Council adopted Bill 26-99 in March 2000.

D. What should be the role of the County Council in the collective bargaining process?

The three collective bargaining laws all require the Council to approve certain portions of a collective bargaining agreement and require the parties to renegotiate portions of an agreement that the Council does not approve. While the Council has amended some aspects of this process since first enacting the collective bargaining laws, the legislative changes enacted over the years have not altered the basic articulation of the Council's role.²

The Council's role in the collective bargaining process, as outlined in the three collective bargaining laws, has several steps. By law:

- The County Executive must describe in the Executive's proposed annual operating budget any collective bargaining agreement or amendment to an agreement that will take effect in the next fiscal year and estimate the cost to implement the agreement;
- During the Council's annual budget process, the County Executive must submit to the Council any terms or conditions in a collective bargaining agreement that require appropriation of funds; enactment, repeal, or modification of County law; or that have a present or future fiscal impact (the Police Labor Relations law does not require identification of items that have a present or future fiscal impact);
- The Council must decide whether it intends to fund or implement those terms or conditions in a collective bargaining agreement requiring Council approval and indicate its intention (or lack of) in a resolution that states any reason it intends to reject any part of an agreement; and
- If the Council intends to reject any part of a collective bargaining agreement, the Council must appoint a representative to meet with the employer and an employee organization and present the Council's views to inform the parties' further negotiations.

If the Council intends to reject any part of a collective bargaining agreement requiring Council approval, the parties must restart negotiations to develop a collective bargaining agreement acceptable to the Council and must submit a renegotiated agreement to the Council. The law also requires all collective bargaining agreements to provide for automatic reduction or elimination of "conditional wage or benefit adjustments" if the Council does not act to implement the agreement or if the Council does not appropriate sufficient funds for an agreement.

The bills that amended aspects of this process from its original form include Emergency Bill 3-93 (adopted March 1993), which revised certain deadlines in the Police Labor Relations law and the County Collective Bargaining law, and Expedited Bill 30-03 (adopted Sept. 2003), which revised certain procedures and practices in the three collective bargaining laws.

² When the Council enacted the County Collective Bargaining law in 1986, the process for Council review of collective bargaining agreements differed from the process in the Police Labor Relations law due to the different impasse resolution process - fact-finding instead of binding arbitration. In 2000, the Council changed the Council review process in the County Collective Bargaining law to mirror those in the Police and Fire and Rescue laws when it changed the impasse resolution process in the County law to binding arbitration.

IV. ROAD MAP

This final overview section includes three tables to assist the reader through the more detailed legislative history contained in Chapters IV through XII:

- Table 3-7 identifies the subject groupings and the specific bills reviewed in the following chapters;
- Table 3-8 identifies Councilmembers and County Executives from 1970 to the present; and
- Table 3-9 lists selected people cited in this report and their affiliations.

Table 3-7. Guide to Bills Discussed in Remaining Chapters

| Chapter Number | Subject | Bills Discussed in Chapter | Chapter begins on Page |
|----------------|---|---|------------------------|
| IV | Reviews the legislative history of the County's first labor relations bill. | Bill 11-76 Bill 23-76 | 24 |
| V | Reviews bills establishing collective bargaining for police officers | Bill 71-81 | 42 |
| VI | Reviews bills establishing collective bargaining for other County Government employees | Bill 19-86 Bill 26-99 | 75 |
| VII | Reviews bills establishing collective bargaining for firefighters | Em Bill 48-87 Em Bill 21-96 | 114 |
| VIII | Reviews bills adding groups of employees to collective bargaining units | Bill 10-00 Bill 13-01 Bill 9-01 Ex Bill 11-05 | 132 |
| IX | Reviews bills that amended the process, procedures, and dates for collective bargaining | Bill 23-97 Em Bill 24-82 Bill 46-83 Em Bill 3-93 Ex Bill 30-03 Ex Bill 19-04 Ex Bill 2-07 | 152 |
| X | Reviews bills that amended the "meet and confer" law on compensation issues | Bill 37-78 Em Bill 16-81 Bill 3-82 Em Bill 13-83 | 161 |
| XI | Reviews bills that made technical changes to the underlying law | Em Bill 18-81 Em Bill 19-94 | 166 |
| XII | Reviews bills to amend the collective bargaining laws that were introduced by the Council, but not passed | Bill 9-85 Bill 2-88 Bill 29-94 Bill 45-97 Bill 2-06 | 168 |

Table 3-8. Names and Terms of County Executives and Councilmembers, 1970 – Present

| County Executive | Term Dates | Montgomery County Councilmembers | |
|-------------------|--------------|--|--|
| James Gleason | 1970-1974 | Idamae Garrott Dickran Hovsepian Sidney Kramer Neal Potter | Elizabeth Scull William Sher William Willcox <i>(resigned 10/72, replaced by Norman Christeller 10/72)</i> |
| | 1974-1978 | Norman Christeller <i>(replaced by William Colman)</i> Esther Gelman Dickran Hovsepian John Menke | Jane Ann Moore Neal Potter Elizabeth Scull |
| Charles Gilchrist | 1978-1982 | Rose Crenca Scott Fosler Esther Gelman Michael Gudis | Neal Potter Ruth Spector Elizabeth Scull <i>(died in office 5/81, replaced by David Scull 6/81)</i> |
| | 1982-1986 | Rose Crenca Scott Fosler Esther Gelman Michael Gudis | William Hanna Neal Potter David Scull |
| Sidney Kramer | 1986-1990 | Bruce Adams Rose Crenca Michael Gudis William Hanna | Isiah Leggett Neal Potter Michael Subin |
| Neal Potter | 1990-1994 | Bruce Adams Derick Berlage Nancy Dacek Gail Ewing William Hanna | Betty Ann Krahnke Isiah Leggett Marilyn Praisner Michael Subin |
| Douglas Duncan | 1994-1998 | Derick Berlage Nancy Dacek Gail Ewing William Hanna Betty Ann Krahnke | Isiah Leggett Neal Potter Marilyn Praisner Michael Subin |
| | 1998-2002 | Philip Andrews Derick Berlage <i>(resigned 6/02; replaced by Donell Peterman 7/02)</i> Nancy Dacek Blair Ewing | Betty Ann Krahnke <i>(resigned 4/00; replaced by Howard Denis 5/00)</i> Isiah Leggett Marilyn Praisner Steven Silverman Michael Subin |
| | 2002-2006 | Philip Andrews Howard Denis Nancy Floreen Michael Knapp George Leventhal | Thomas Perez Marilyn Praisner Steven Silverman Michael Subin |
| Isiah Leggett | 2006-Present | Philip Andrews Roger Berliner Marc Elrich Valerie Ervin Nancy Floreen | Michael Knapp George Leventhal Marilyn Praisner <i>(died in office 2/08, replaced by Donald Praisner 5/08)</i> Duchy Trachtenberg |

Table 3-9. Partial List of People Referenced in Legislative History

| Name | Title and Affiliation |
|----------------------|---|
| Joseph Adler | Director, Office of Human Resources, County Government |
| Walter Bader | President, Fraternal Order of Police, Montgomery County Lodge 35 |
| Carey Butsavage | Attorney, MCGEO |
| Robert Carty | Assistant CAO, Office of the County Executive |
| Maria Coleman | President, Latin American Council for Advancement |
| Norman Conway | Montgomery County Career Firefighters Association |
| Kathy Dolan | Employee Organizations Task Force |
| George Driesen | Attorney, Fraternal Order of Police, Lodge 35 |
| David Eberly | President, Montgomery County Education Association |
| Michael Faden | Senior Legislative Attorney, County Council (staff) |
| Daisy Fields | Chair of the Personnel Board |
| John Fiscella | Individual (consultant on public sector labor relations) |
| Vincent Foo | President, MCCSSE Local 500 |
| David Frankel | Legislative Counsel, County Council (staff) |
| William Garrett | Director, Personnel Office, County Government |
| Jim Goeden | Bethesda-Chevy Chase Chamber of Commerce |
| Michael Goldman | Assistant General Counsel, National Treasury Employees Union |
| John Hardy | Montgomery County Fire Fighters Association |
| Clinton Hilliard | Director, Personnel Office, County Government |
| Robert Hillman | Attorney, Outside Counsel hired by the County Executive |
| William Hussman | Chief Administrative Officer, County Government |
| Allan Katz | Attorney, Fraternal Order of Police, Lodge 35 |
| Fred Keeney | President, Fraternal Order of Police, M-NCPPC Lodge 30 |
| Robert Kendal | Director, Office of Management and Budget, County Government |
| Suzanne Levin | Assistant County Attorney |
| Ronald Lloyd | Director, Personnel Office , County Government |
| Richard McKernon | County Attorney |
| James Mills | President, MCGEO |
| Charles Moose | Chief of Police |
| Marta Brito Perez | Director, Office of Human Resources, County Government |
| Landon Pippin | President, Montgomery County Career Fire Fighters Association |
| Gino Renne | President, MCGEO |
| Sean Rogers | Chief, Labor/Employee Relations and Training, Personnel Office, County Government |
| Edward Rovner | Special Assistant, Office of the County Executive |
| Charles Simpson | President, Fraternal Order of Police, Lodge 35 |
| John Sparks | President, Montgomery County Career Fire Fighters Association, IAFF Local 1664 |
| Arthur Spengler | Council Staff Director, County Council (staff) |
| Robert (Bob) Stewart | MCGEO |

Table 3-9. Partial List of People Referenced in Legislative History (Cont.)

| Name | Title and Affiliation |
|-------------------|--|
| Andrew Strongin | County Government Labor Relations Administrator |
| Richard Svertesky | Fraternal Order of Police, Montgomery County Lodge 35 |
| William Thompson | Attorney, MCGEO |
| James Torgesen | Labor/Employee Relations Manager, Office of Human Resources, County Government |
| Melvin (Mel) Tull | MCGEO |
| Allen Whitney | Executive Vice President, International Brotherhood of Police Officers |
| William Willcox | Attorney, Outside Counsel hired by the County Council |
| Joslyn Williams | Metropolitan Washington Council AFL-CIO |
| Harold Wirth | Montgomery County Taxpayers League |
| Mr. Wolfman | MCGEO |

CHAPTER IV. Establishing a “Meet and Confer” Process

Bill 11-76, enacted by the County Council on December 14, 1976, established a “meet and confer” process that required County Government representatives to meet at least twice a year with employee organizations. This bill was the precursor to the County’s first collective bargaining bill, passed by the Council in 1982. Section I of this chapter summarizes the legislative history of the “meet and confer” legislation; and Section II describes the main issues discussed during the legislative process.

The table below summarizes the key dates related to the consideration and enactment of Bill 11-76.

Table 4-1. Key Dates for Bill 11-76

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--|-------------------|---------------------|----------------|
| April 6, 1976 | July 14, 1976 | August 25, 1976 Oct. 14, 1976 | Dec. 14, 1976 | Dec. 27, 1976 | March 13, 1977 |
| Bill Sponsored by: | | Council President at the request of County Executive Gleason | | | |

Summary of Major Provisions in Bill 11-76, as Adopted in 1976

The “meet and confer” process established by Bill 11-76, as adopted by the Council and signed by the Executive, required County Government representatives to meet with employee organizations to discuss personnel policies, practices, and matters affecting working conditions of employee units.¹ Following these discussions, the County Government and the employee organization(s) could file joint or separate written position papers describing the parties’ position on topics discussed; however, decisions made during discussions were not binding on the parties.²

As enacted, Bill 11-76 also:

- Established a set of “employee rights;”³
- Established a process for the Chief Administrative Officer to determine “employee units” – or groups of employees who could seek common representation by an employee organization;⁴
- Established a process to certify and decertify an employee organization to act as a representative of an employee unit;⁵
- Established County Government and employee organization responsibilities;⁶
- Allowed a represented employee to have a member of an employee organization present during discussions or counseling related to an individual grievance; and
- Allowed an employee organization to file a grievance “on the same basis as provided for individual grievances.”⁷

¹ Final Bill 11-76, § 33-69(a).

² Ibid. § 33-69(b), (c).

³ Ibid. § 33-64.

⁴ Ibid. § 33-65.

⁵ Ibid. §§ 33-66; 33-67.

⁶ Ibid. §§ 33-72; 33-73.

⁷ Ibid. § 33-70(b).

The Council unanimously voted (7-0) to approve the final version of Bill 11-76.⁸ The Councilmembers at the time were Norman Christeller, Esther Gelman, Dickran Hovsepian, John Menke, Jane Ann Moore, Neal Potter, and Elizabeth Scull.

I. LEGISLATIVE HISTORY OF BILL 11-76

Council President Norman Christeller introduced Bill 11-76 in April 1976 at the request of County Executive James Gleason.⁹ The County Executive initially sent the proposed bill to the Council in June 1975. The Council deferred action in anticipation of State legislation that would allow the Council to pass a “stronger” bill than the proposed “meet and confer” legislation.¹⁰ In a September 1974 opinion, County Attorney Richard McKernon had informed Ronald Lloyd, Director of the County’s Personnel Office (“Personnel Director”) that the County Government had the legislative authority to enact “meet and confer” legislation, but was “prohibited from entering into binding collective bargaining agreements” because of the absence of “State-enabling legislation.”¹¹

In March 1976, County Executive Gleason again asked Council President Christeller to introduce the proposed bill based on advice to him that State legislation to allow a “stronger” bill would not be passed that year. The County Personnel Board, the precursor to the Merit System Protection Board, reviewed and endorsed the bill in May 1976, stating that it was “essential to the maintenance of good employer/employee relations.”¹²

Two months later, in June 1976, Council President Christeller introduced Bill 23-76, a different version of a “meet and confer” bill. Bill 23-76 was drafted by and introduced at the request of the Montgomery County Government Employees Organization (MCGEO).¹³

Below are some examples of specific comments offered on the legislation by the different labor organizations representing County employees at that time. The general view expressed was to favor Bill 23-76 over Bill 11-76:

- MCGEO characterized Bill 23-76 as “the single most important piece of legislation that jointly affects labor and management in the County’s history. It offers official recognition by management of labor, but more importantly, it opens up a vital channel of communication between these two parties.”¹⁴

⁸ 12-14-76 County Council Minutes at p. 1457.

⁹ See 4-6-76 County Council Minutes at p. 1202.

¹⁰ See 3-3-76 Memorandum from County Executive Gleason to Council President Christeller.

¹¹ 9-13-76 County Attorney Opinion 74.140 at p. 2.

¹² See 5-17-76 Memorandum from Daisy Fields, Chair, County Personnel Board, to Council President Christeller.

¹³ See 6-15-76 County Council Minutes at p. 1261. See also 6-15-76 Memorandum from Council President Christeller to County Council, discussing the Council’s consideration of Bills 11-76 and 23-76 [hereinafter “6-15-76 Christeller Memo”].

¹⁴ 7-14-76 Public Hearing Transcript at p. 24.

- The Montgomery County Fire Fighters Association found Bill 11-76 “totally unacceptable to” the Association and “strongly support[ed] Bill 23-76.”¹⁵
- The International Brotherhood of Police Officers articulated “some very basic problems” with Bill 11-76, including a lack of “any procedure by which any differences that might arise ... may be resolved in an impartial and fair fashion.”¹⁶
- The Fraternal Order of Police, Lodge 35 viewed Bill 23-76 as a “step in the right direction, but lack[ing] essential elements, such as a collective bargaining with binding arbitration clause.”¹⁷

Before enacting Bill 11-76, the Council held a joint public hearing and two joint worksessions on both bills. In crafting a final bill, the Council used the Executive’s original bill (11-76) as its starting point, modified several portions, and incorporated some concepts and language from MCGEO’s bill into the final version of Bill 11-76.

II. MAJOR LEGISLATIVE ISSUES

The processes and procedures established by Bill 11-76, as adopted in December 1976, formed the foundation for the police, fire, and County Government collective bargaining laws in place today. The Council’s deliberations on Bills 11-76 and 23-76 included discussion and debate on numerous issues raised in the two bills, including:

- Employees eligible for representation by an employee organization;
- Determination of “Employee Units;”
- Elections and certification of employee organizations;
- “Meet and Confer” requirements;
- Payroll deductions;
- Disputes; and
- Option to join an employee organization.

This section summarizes these issues discussed by the Council during the legislative process that resulted in the enactment of Bill 11-76.

A. Employees Eligible for Representation by an Employee Organization

Under Bill 11-76, as adopted by the Council, “employees” had the right to “form, join or assist and be represented by an employee organization.”¹⁸ Consequently, the definition of an “employee” under Bill 11-76 determined which individuals working for the County Government had the right to be represented by an employee organization.

¹⁵ See 5-17-76 Letter from Montgomery County Fire Fighters Association First Vice President Thomas Finnin to the County Council at p. 1; 7-14-76 Public Hearing Transcript at p. 35.

¹⁶ 7-14-76 Public Hearing Transcript at p. 17.

¹⁷ Ibid. at p. 50.

¹⁸ Final Bill 11-76, § 33-64(a).

Many local government jurisdictions follow the model of the Federal National Labor Relations Act and exclude supervisors and confidential employees from representation.¹⁹ One of the major topics discussed during the worksessions on Bills 11-76 and 23-76 was how to draw the line between who could and could not join an employee organization.

The first draft of Bill 11-76 defined an “employee” as a “County merit system employee” working on a “continuous full-time, year-round basis.” The definition excluded supervisory, confidential, and management-level employees – all defined in the first draft of the bill.²⁰

Bill 23-76 defined an employee as anyone “working full or part-time whose classification and/or job description is determined in whole or in part by the chief administrative officer under the general classification plan of the personnel board....” The definition excluded elected officials and management-level employees.²¹ Comparing the first drafts of the two bills, Council President Christeller commented that “Bill 11-76 seems to me to provide too broad a definition of ‘management-level employees’ and ‘supervisors’ while Bill 23-76 provides too narrow a definition.”²²

July 14, 1976 Public Hearing. The Council held a public hearing on the two bills on July 14, 1976. The question of which employees could join an employee organization was addressed by most speakers at the public hearing.

Council President Christeller characterized the issue of whether to include supervisors in an employee unit with non-supervisory employees as follows: who does an employee organization represent in a grievance if the grievance involves a rank and file employee and a middle-level supervisor if both are members of an employee organization?²³ MCGEO President James Mills indicated there was no “simple solution” to the question and emphasized “avoiding grievances rather than always treating grievances.”²⁴

Assistant CAO Robert Carty, speaking on behalf of the County Executive, highlighted that MCGEO’s bill “would appear to permit the majority of County supervisors to join units with rank and file.”²⁵ MCGEO President Mills reasoned that MCGEO, as organized at the time, represented both supervisors and staff and that:

Supervisors and staff alike consider themselves an integral part of labor rather than management and voluntarily aligned themselves accordingly.... Any effort to exclude other than top management personnel from being members of this organization contrary to their voluntary choice, would not be in accordance with sound democratic principles.²⁶

¹⁹ “Labor-Management Relations and Collective Bargaining,” *Human Resources Management in Local Government: An Essential Guide*, International City/County Management Association at 96 (2004) [hereinafter *Human Resources Management*].

²⁰ Bill 11-76 Draft #1, § 33-63(d).

²¹ Bill 23-76, § 36A-2(c).

²² 6-15-76 Christeller Memo.

²³ 7-14-76 Public Hearing Transcript at p. 32.

²⁴ *Ibid.*

²⁵ *Ibid.* at p. 8.

²⁶ *Ibid.* at p. 26.

MCGEO Vice President Melvin Tull similarly urged the Council to include supervisory, management, and confidential personnel in employee organizations in addition to rank and file employees.²⁷

Following the public hearing, the County Personnel Board recommended using MCGEO's broader definition of employee,²⁸ while Personnel Director Lloyd suggested expanding the definition in the first draft of the County Executive's bill to include both full-time and part-time employees.²⁹

August 25, 1976 Council Worksession. At its August 1976 worksession, the Council discussed which employees should be allowed to join an employee organization.³⁰ The discussion also focused on the mechanism in the law for the Executive Branch to identify positions that would be excluded from joining employee organizations.

Councilmembers and others worksession participants identified numerous issues and discussed alternatives for identifying employees who could join employee organizations:

- In response to the suggestion that management-level employees should be allowed to join employee organizations because the “meet and confer” process produced no binding agreements, Council President Christeller countered that if the Council subsequently enacted collective bargaining legislation, the Council might have to then exclude employees under a collective bargaining law from joining an employee organization who were previously allowed to join under the “Meet and Confer” law.³¹
- Councilmember Hovsepian supported excluding management-level employees such as “division or section heads that report directly to department heads...”³²
- Personnel Director Lloyd recommended excluding division or section heads from joining an employee organization, but noted the absence of a standard classification of divisions or sections among County departments.³³
- MCGEO representative Mr. Wolfman indicated MCGEO's desire “to extend the benefits of an employees [sic] organization to the maximum number of County employees” to “give them political power.”³⁴
- MCGEO Vice President Melvin Tull encouraged Councilmembers to “keep in mind” that confidential employees are trustworthy and allowing them to join an employee organization “would not cause them to give up confidential information.”³⁵

²⁷ Ibid. at p. 46-49.

²⁸ 8-24-76 Memorandum from Pearl Schloo, Legislative Research Coordinator to County Council at p. 7 [hereinafter “8-24-76 Schloo Memo”].

²⁹ 8-24-76 Memorandum from Ronald Lloyd, Personnel Director, to Council President Christeller at p. 1 [hereinafter “8-24-76 Lloyd Memo”].

³⁰ 8-25-76 County Council Minutes at p. 2.

³¹ Ibid. at p. 2.

³² Ibid. at p. 4.

³³ Ibid. at p. 3.

³⁴ Ibid. at p. 5.

³⁵ Ibid. at p. 3.

- MCGEO President James Mills predicted that MCGEO would lose approximately one-third of its membership if the Council excluded assistant section heads from representation (and would necessitate his resignation from MCGEO).³⁶

Approaches to distinguish employees who could and could not join an employee organization included the following:

- Personnel Director Lloyd supported broad language defining “employee” and supported including guidelines in the law to determine participation in an employee organization on a case-by-case basis after discussions between management and an employee organization. Mr. Lloyd did not support including language in the law to exclude specific positions.³⁷
- Council President Christeller “suggested that the bills define ‘employee’ as persons who may be permitted to join the organization, and add ‘except the following’ with a listing of positions and types of positions that would be excluded from joining.”³⁸

Following Council President Christeller’s suggestion, Councilmembers offered suggestions for different groups of employees to exclude from joining employee organizations, including:

- Confidential aides to elected officials;
- Non-merit system employees;
- Heads of departments, principal offices, and agencies;
- Deputy or assistant heads of departments, principal offices, and agencies;
- Principal Administrative Aides to department heads and to assistant or deputy directors;
- Employees who report directly to or whose immediate supervisor is the County Executive, County Council, Councilmembers, or the CAO; and principal aides to these individuals;
- “Heads of the constituent offices and divisions in the Department of Transportation existing at the time of enactment of [the] bill and positions carrying a similar degree of personnel management responsibility in other departments and offices, as determined by the Chief Administrative Officer;”
- Employees in the Office of the County Attorney;
- Employees in the Office of Budget and Research;
- Employees in the Office of Employee Relations;
- Employees in the Office of the Personnel Board; and
- Employees in the Department of Personnel.³⁹

³⁶ Ibid. at p. 3.

³⁷ Ibid.

³⁸ Ibid. at p. 3.

³⁹ Ibid. at p. 3-4, 7-8.

October 14, 1976 Council Worksession. At the October worksession on Bills 11-76 and 23-76, Councilmembers continued to discuss which employees should be represented by an employee organization.

Councilmember Menke expressed concern about establishing an adversarial relationship between those included and those excluded from employee organizations. He believed that excluding supervisors from an organization under a “meet and confer” system would establish an adversarial relationship that would continue if the “Meet and Confer” law evolved into collective bargaining. He also believed that excluding supervisors from a “meet and confer” system would build momentum toward a collective bargaining system, which he did not support.⁴⁰ Councilmember Menke “believe[ed] that many real benefits can be achieved through a less adversary-style process.”⁴¹ Several Councilmembers suggested that supervisors might be allowed to organize separately, especially if a collective bargaining system were established in the future.⁴²

Personnel Director Lloyd suggested that if the “meet and confer” system developed into a collective bargaining system, it would be difficult to exclude employees who were permitted to join an employee organization under the “meet and confer” system.⁴³ MCGEO President James Mills indicated that many MCGEO members did not want a collective bargaining process and hoped that the “meet and confer” process worked well.⁴⁴

December 14, 1976 Council Discussion and Adoption of Bill 11-76. On December 14, 1976, the Council continued to discuss which employees should be eligible to join an employee organization.⁴⁵ The Council had before it the second draft of Bill 11-76 (drafted following the earlier Council worksessions), which defined an “employee” as “any County merit system employee working on a continuous full-time, career or part-time, career basis;” the draft bill also excluded the following 12 groups of employees from joining an employee organization:

- Confidential aid[e]s to elected officials;
- All non-merit system employees;
- All heads of principal departments, offices, and agencies;
- Deputy or assistant department heads;
- Employees that provide direct staff or administrative support to a department director or to a deputy or assistant director in a director’s immediate office;
- Employees who report directly to or whose immediate supervisor is the County Executive, County Council, Councilmembers, or the CAO, and principal aides to those individuals;
- Employees of the Office of the County Attorney;
- Employees of the Office of Budget and Research;

⁴⁰ Ibid. at p. 4.

⁴¹ Ibid. at p. 3.

⁴² Ibid. at p. 4.

⁴³ Ibid. at p. 3.

⁴⁴ Ibid. at p. 5.

⁴⁵ See 12-14-76 County Council Minutes.

- Employees of the Office of Employee Relations;
- Employees of the Personnel Board;
- Employees of the Personnel Office; and
- Heads of several specified offices, divisions, and sections in the Department of Transportation, and positions in other departments and offices with “a similar degree of personnel management responsibilities” as determined by the CAO.⁴⁶

After defeating a number of amendments proposed to the above list of exclusions (described below), the Council adopted Bill 11-76 with the definition presented in the second draft of the legislation.

At the worksession, the Council also had before it a December 13, 1976 memo from MCGEO President Mills that expressed great concern about the membership restrictions in the second draft of Bill 11-76: “The limits this bill imposes on membership eligibility are totally unacceptable.”⁴⁷ In that memo, Mr. Mills predicted that if the Council passed Bill 11-76 with the language in the second draft:

Polarization of staff and supervisors would occur immediately and radical elements would be provided with the necessary “ammunition” to strengthen their causes and direct their actions toward the public arena rather than the conference table.⁴⁸

Councilmembers Potter and Moore suggested that the group of employees proposed for exclusion from employee organizations was too broad. Councilmember Potter made two motions. The first motion was to allow employees in the Office of the County Attorney to join an employee organization.⁴⁹ The second motion was to allow staff with administrative responsibilities in the Office of Budget and Research to join an employee organization.⁵⁰

Councilmember Christeller (who was no longer Council President in December 1976) disagreed, noting that staff in the Office of the County Attorney advise the Personnel Board and would deal with matters concerning an employee organization. Councilmember Christeller suggested it would be difficult to exclude some staff in the Office of the County Attorney from an employee organization, allow the remaining staff to join, but require the excluded staff to keep confidential all information related to employee organizations.⁵¹

Assistant County Attorney Suzanne Levin explained that all Assistant County Attorneys have grievance cases before the Personnel Board. Council President Menke highlighted a potential conflict of interest for these staff to be in an employee organization but represent the County in grievances where the employee organization may be involved on behalf of an employee.⁵²

⁴⁶ 12-10-76 Memorandum from Pearl Schloo, Legislative Research Coordinator, to County Council at p. 5 [hereinafter “12-10-76 Schloo Memo”].

⁴⁷ See 12-13-76 Memorandum from MCGEO President James Mills to Council President Menke at p. 1 [hereinafter “12-13-76 Mills Memo”].

⁴⁸ Ibid.

⁴⁹ 12-14-76 County Council Minutes at p. 1453.

⁵⁰ Ibid. at p. 1454.

⁵¹ Ibid. at p. 1453.

⁵² Ibid.

With respect to staff in the Office of Budget and Research, Councilmember Christeller commented that allowing staff who make recommendations on employee benefits, cost-of-living increases, and the compensation schedule to join an employee organization could raise questions about the objectivity of those staff.⁵³ Both of Councilmember Potter's motions failed, with Councilmembers Potter and Moore voting for the motions and Councilmembers Hovsepian, Christeller, Menke, Scull, and Gelman voting against the motions.⁵⁴

As indicated above, after defeating several proposed amendments, the final bill adopted by the Council included the definition of "employee" described above, as presented in the second draft of Bill 11-76.⁵⁵

B. Determination of "Employee Units"

As defined in the law, "employee units" are the "groupings of employees for purposes of representation in County/employee relations."⁵⁶ This section summarizes four issues that arose during discussions of Bills 11-76 and 23-76 with respect to employee units.

Decision-Making Authority. The final version of Bill 11-76 gave the Chief Administrative Officer (CAO) authority to determine employee units provided that "the decision of the CAO shall be final after opportunity is provided for those disputing the determination to be heard by the CAO."⁵⁷ This differed slightly from the first drafts of Bills 11-76 and 23-76.

The first draft of Bill 11-76 gave the CAO final authority to determine employee units with no provision for individuals "to be heard."⁵⁸ Bill 23-76 gave the CAO initial authority to determine employee units, but authorized review of the decision by the Personnel Board in disputed cases.⁵⁹

At the July 1976 public hearing on the bills, Assistant CAO Robert Carty, speaking for the County Executive, characterized this decision-making authority as "critical to management," rejecting the suggestion that a decision on employee units could be appealed to the Personnel Board.⁶⁰ He also indicated that the County Charter specifically sets out the Personnel Board's authority, which did not extend to "employer-employee relations."⁶¹

Personnel Director Lloyd and Daisy Fields, Chair of the Personnel Board, both suggested changes to this part of the law. Mr. Lloyd recommended that the Personnel Director make the initial determination of employee units with disputes reviewed by the Personnel Board, whose determination would be final.⁶² The Personnel Board supported the language proposed in Bill 23-76, which would have given the Personnel Board authority to review the CAO's determination in disputed cases.⁶³

⁵³ Ibid. at p. 1454.

⁵⁴ Ibid. at p. 1454.

⁵⁵ See Final Bill 11-76, § 33-63(c).

⁵⁶ Ibid., § 33-63(e).

⁵⁷ Final Bill 11-76, § 33-65(e).

⁵⁸ Bill 11-76 Draft #1, § 33-65(a), (f).

⁵⁹ Bill 23-76, § 36A-4(a), (d).

⁶⁰ Bill 11-76 Public Hearing Transcript at p. 10.

⁶¹ Ibid.

⁶² 8-24-76 Lloyd Memo at p. 1-2.

⁶³ 8-24-76 Schloo Memo at p. 8.

In the October 1976 worksession, the Council disagreed with Mr. Lloyd's suggestion to allow the Personnel Director to determine employee units.⁶⁴ Several Councilmembers also disagreed with allowing the Personnel Board to review the CAO's determination of employee units. Council President Christeller suggested including language in the law to ensure that people can present their views on unit determination directly to the CAO.⁶⁵ The Council, without objection, added Council President Christeller's proposed language to the final version of the bill.⁶⁶

Factors to Consider When Determining Employee Units. Bill 11-76, as proposed by the County Executive, identified several factors for the CAO to consider when determining employee units:

- Employees sharing common skills;
- Working conditions;
- Physical locations;
- Organizational structures; and
- Integrated work processes.⁶⁷

Bill 23-76 included the same factors listed above and added the following:

- Community of interest;
- The history of collective bargaining;
- The effectiveness and efficiency of labor management relations affected by the unit;
- The desires of the employees;
- The effects of over-fragmentation; and
- The effects on the efficiency of the government.⁶⁸

The final bill included the language as recommended by the County Executive in the initial draft of Bill 11-76.⁶⁹

Number of Employee Units. The original drafts of Bills 11-76 and 23-76 did not establish a limit on the number of employee units that could be established. At the July 1976 public hearing on the bills, Assistant CAO Robert Carty indicated the County Executive's desire to avoid a proliferation of employee units, and highlighted that a neighboring county had 25 units.⁷⁰ Mr. Carty suggested limiting the number of employee units to no more than six.⁷¹

Personnel Director Lloyd recommended allowing for all employees to be represented in one unit, but limiting the total number of units to five or fewer.⁷² Following the public hearing on the bills, the County Executive recommended limiting the number of units to six or fewer.⁷³

At the October 1976 Council worksession on the bills, Councilmembers asked Personnel Director Lloyd the basis for limiting the number of employee units. Mr. Lloyd discussed his intent to anticipate how groups of employee would logically break down into units and then

⁶⁴ 10-14-76 County Council Minutes at p. 7.

⁶⁵ Ibid. at p. 8.

⁶⁶ Ibid. at p. 8.

⁶⁷ Bill 11-76 Draft #1, § 33-65(b).

⁶⁸ Bill 23-76, § 36A-4(b).

⁶⁹ Final Bill 11-76, § 33-65(b).

⁷⁰ Bill 11-76 Public Hearing Transcript at p. 9.

⁷¹ Ibid.

⁷² 8-24-76 Lloyd Memo at p. 2.

⁷³ 8-24-76 Schloo Memo at p. 2.

include an extra one for unforeseen circumstances.⁷⁴ The Council agreed to add a statement of legislative intent discouraging proliferation of units, but indicating the Council willingness to expand any number included in the law based on a valid reason.⁷⁵ The Council agreed at the worksession to the final language in Bill 11-76 that limited the number of employee units to seven or fewer.⁷⁶

Limiting Participation of Uniformed Employees in Employee Units. Based on a desire to include rank and file employees in employee organizations and exclude supervisors, the first draft of Bill 11-76 limited participation of uniformed employees to those “in the ranks of sergeant or equivalent rank and below.”⁷⁷ Bill 23-76 had no similar provision.

Representatives of uniformed employees expressed different opinions at the July 1976 public hearing about limiting the participation of certain uniformed employees:

- Allen Whitney, Executive Vice President of the International Brotherhood of Police Officers (IBPO), recommended limiting the participation of uniformed employees to those in the rank of corporal or below (a rank below sergeant).⁷⁸
- John Hardy, representing the Montgomery County Fire Fighters Association, indicated that his organization represented sergeants, lieutenants, captains, and an assistant chief, and that limiting representation to certain ranks would disenfranchise firefighters.⁷⁹
- Fraternal Order of Police President Charles Simpson supported excluding employees above the rank of sergeant.⁸⁰

Council President Christeller observed that firefighters would not be covered under the bill because they were not County employees.⁸¹ Following the public hearing, Personnel Director Lloyd and the Personnel Board voiced their agreement with the IBPO and recommended limiting uniformed employees to those in the rank of corporal or below.⁸²

At the Council’s October 1976 worksession, IBPO Executive Vice President Allen Whitney reasoned that membership should be limited to police officers with the ranks of corporal, private first class, and private because “[it] is not workable, nor effective, to include supervisors in the same unit with employees; it results in a lot of conflicts.... This results in situations where employees file grievances against the people who are active members of the organization.”⁸³

⁷⁴ 10-14-76 County Council Minutes at p. 8.

⁷⁵ Ibid. at p. 8.

⁷⁶ Ibid. at p. 8; Final Bill 11-76, § 33-65(c).

⁷⁷ Bill 11-76 Draft #1, § 33-65(e).

⁷⁸ 7-14-76 Public Hearing Transcript at p. 18.

⁷⁹ Ibid. at p. 36.

⁸⁰ Ibid. at p. 50.

⁸¹ 10-14-76 County Council Minutes at p. 5.

⁸² 8-24-76 Schloo Memo at 8; 8-24-76 Lloyd Memo at p. 2.

⁸³ Ibid. at p. 7.

The Council agreed with the position advocated by the IBPO and approved an amendment to Bill 11-76 to limit participation to uniformed employees in the rank of corporal and below.⁸⁴ The final bill approved by the Council reflected this change.⁸⁵

C. Elections and Certification of Employee Organizations

For an employee organization to be certified to represent an employee unit, the organization must win an election with votes cast by employees in the unit the organization seeks to represent. As adopted by the Council, Bill 11-76 established some parameters for conducting these elections. Before passing the final bill, the Council discussed three of these parameters, summarized below.

Minimum Voting Requirement. Bills 11-76 and 23-76 both contained requirements to be met in order for an employee organization to win an election. In addition to requiring an employee organization to receive a majority of votes cast, both bills required a minimum number of employees to vote in an election in order for the Chief Administrative Officer to certify the election.

In the first draft of Bill 11-76, an employee organization could be certified to represent an employee unit only if: (1) it won a majority of votes in an election, and (2) at least 60 percent of “employees eligible to participate in the election cast valid ballots....”⁸⁶ Bill 23-76 required that 50 percent of eligible employees cast ballots plus a majority vote.⁸⁷

At the July 1976 public hearing on the bills, Assistant CAO Robert Carty spoke in support of the 60 percent voting requirement, stating that it was “not unreasonable, considering the importance of certifying employee organizations.”⁸⁸ In comparison, Michael Goldman, the Assistant General Counsel of the National Treasury Employees Union, proposed removing any requirement for a minimum number of voters to certify an election.⁸⁹

At the Council’s October 1976 worksession, Personnel Director Lloyd stated that it was “common” in other jurisdictions to require that 60 percent of eligible employees participate in an election.⁹⁰ While several Councilmembers questioned the 60 percent voting requirement, the Council did not amend the requirement or remove it from the bill.⁹¹ The final version of Bill 11-76, as adopted by the Council, required that 60 percent of eligible employees cast ballots in order to certify an election of an employee organization.⁹²

Cost of Conducting Elections. Bills 11-76 and 23-76 both contained provisions for allocating the cost of conducting elections. The first draft of Bill 11-76 divided these costs “equally” between the County and “the employee organization(s) whose name(s) appear on the ballots.”⁹³

⁸⁴ Ibid. at p. 7.

⁸⁵ Final Bill 11-76, § 33-65(d).

⁸⁶ Bill 11-76 Draft #1, § 33-66(f).

⁸⁷ Bill 23-76, § 36A-5(f).

⁸⁸ 7-14-76 Public Hearing Transcript at p. 11.

⁸⁹ Ibid. at p. 42-43.

⁹⁰ 10-14-76 County Council Minutes at p. 9.

⁹¹ Ibid. at p. 9-10.

⁹² Final Bill 11-76, § 33-66(f).

⁹³ Bill 11-76 Draft #1, § 33-68.

Bill 23-76 required the County to pay the full cost of elections.⁹⁴ After reviewing both bills, the Personnel Board recommended that employee organizations that seek election should pay for the full cost of elections.⁹⁵

At the October 1976 Council worksession, several Councilmembers inquired about the cost of conducting elections, noting that election costs could be a burden for an employee organization. Council President Christeller suggested – and the Council agreed – to splitting the cost – with the County paying 50 percent of the costs and all employee organizations on a ballot equally splitting 50 percent of the costs.⁹⁶ The final version of Bill 11-76, as approved by the Council, contained the cost sharing arrangement, as proposed by Mr. Christeller.⁹⁷

Election Overseers. Bills 11-76 and 23-76 both identified entities that would conduct an election for an employee organization. The first draft of Bill 11-76 required elections to be performed by the “Maryland State Department of Labor and Industry, Division of Arbitration.”⁹⁸ Bill 23-76 required the Personnel Board to conduct elections and the Board could “ask for the assistance of the Maryland State Department of Labor and Industry or any other impartial agency.”⁹⁹

At the public hearing on the bills, Assistant CAO Robert Carty commented that Bill 11-76, as drafted, was too narrow, and that it should allow for election assistance by third parties.¹⁰⁰ Following the public hearing, Personnel Director Lloyd suggested that the Personnel Office conduct elections with the option to request assistance from the Maryland State Department of Labor and Industry “or any other third party having similar qualifications.”¹⁰¹ The Council agreed to Mr. Lloyd’s proposed language at its October 1976 worksession.¹⁰²

Language in the second draft of Bill 11-76 indicated that elections would be performed “under the auspices and guidance of” the Maryland State Division of Labor and Industry, Mediation and Conciliation Services, but would be conducted by the Personnel Office, which could “use the services of the Maryland State Division of Labor and Industry or any other third party having similar qualifications.”¹⁰³ Following some discussion, the Council amended the bill to reflect Personnel Director Lloyd’s recommendation, which was to give the Personnel Office authority to conduct elections with the option to “use the services of the Maryland State Division of Labor and Industry or any other third party having similar qualifications.”¹⁰⁴

D. “Meet and Confer” Requirements

Bill 11-76 established certain requirements about how the parties should “meet and confer.” Three of the requirements debated during worksessions on the bill were: the number of meetings; allowable subjects for discussion in “meet and confer” sessions; and County participants in meetings. This section summarizes these discussions.

⁹⁴ Bill 23-76, § 36A-7.

⁹⁵ 8-24-76 Schloo Memo at p. 9.

⁹⁶ 10-14-76 County Council Minutes at p. 12.

⁹⁷ Final Bill 11-76, § 33-68.

⁹⁸ Bill 11-76 Draft #1, § 33-66(d).

⁹⁹ Bill 23-76, § 36A-5(d).

¹⁰⁰ 7-14-76 Public Hearing Transcript at p. 10.

¹⁰¹ 8-24-76 Lloyd Memo at p. 2.

¹⁰² 10-14-76 County Council Minutes at p. 9.

¹⁰³ 12-10-76 Schloo Memo at p. 9.

¹⁰⁴ 10-14-76 County Council Minutes at p. 9; Final Bill 11-76, § 33-66(d).

Number of Meetings. The first draft of Bill 11-76 required the County to meet with each certified employee organization at least once every two years.¹⁰⁵ Bill 23-76, on the other hand, required meetings at least four times each year, on a quarterly basis.¹⁰⁶

At the public hearing on the bills, Assistant CAO Carty spoke in favor of annual meetings between the parties.¹⁰⁷ Allen Whitney, Executive Vice President of the International Brotherhood of Police Officers, expressed a preference for monthly meetings but indicated that the quarterly meetings proposed in Bill 23-76 would be acceptable.¹⁰⁸

Following the public hearing, Personnel Director Lloyd recommended the parties meet *at least* twice annually,¹⁰⁹ and the Personnel Board recommended the parties meet *no more than* twice annually, with a requirement that if the number of certified employee organizations exceeded six, the organizations would be required “to form a Congress” to meet with County representatives not more than three times a year.¹¹⁰

At the October 1976 Council worksession, the Council agreed without objection to Mr. Lloyd’s recommendation to require meetings at least twice annually between County Government representatives and each certified employee organization.¹¹¹ The final version of Bill 11-76 followed this approach.¹¹²

Authorized Topics of Discussion. The first drafts of Bills 11-76 and 23-76 differed in the topics included for and explicitly excluded from discussion during “meet and confer” sessions. The first draft of Bill 11-76 allowed discussion of “personnel policies, practices and matters affecting working conditions of the employee unit [the organization] represents,”¹¹³ but prohibited discussion of the following topics:

- The mission of the County Government;
- Its budget;
- Its organization;
- The number of employees and the classifications and grades of positions of employees assigned to an employee unit;
- Work projects or tour of duty;
- The technology of performing County work;
- Other provisions that are inherent in the managerial process of determining the necessary steps to carry out the public services mission of the County; and
- Matters which must necessarily be applicable to all employees on a uniform basis, such as the Employees’ Retirement System and the Uniform Pay Schedule.¹¹⁴

¹⁰⁵ Bill 11-76 Draft #1, § 33-69(a).

¹⁰⁶ Bill 23-76, § 36A-8(a).

¹⁰⁷ 7-14-76 Public Hearing Transcript at p. 11-12.

¹⁰⁸ Ibid. at p. 19.

¹⁰⁹ 8-24-76 Lloyd Memo at p. 3.

¹¹⁰ 8-24-76 Schloo Memo at p. 8.

¹¹¹ 10-14-76 County Council Minutes at p. 12.

¹¹² Final Bill 11-76, § 33-69(a).

¹¹³ Bill 11-76 Draft #1, § 33-69(a).

¹¹⁴ Ibid. § 33-69(b).

The first version of Bill 11-76 did allow County representatives to meet with employee organizations “for the purpose of hearing their views on [the above] matters.”¹¹⁵ By contrast, Bill 23-76 specifically *included* as matters for discussion all of the topics excluded in the first draft of Bill 11-76.¹¹⁶

At the July 1976 public hearing on the bill, Assistant CAO Robert Carty explained that labor relations legislation typically excludes matters that are the prerogative of the legislative and executive branches from discussion by the parties.¹¹⁷ He identified topics that could still be discussed by the parties, including “work conditions, promotional policies, training programs, group insurance package, cost-of-living adjustments and the administration of the Merit System”¹¹⁸

At the public hearing, labor organization representatives unanimously spoke in opposition of limiting the scope of discussions between the parties:¹¹⁹

- MCGEO President James Mills suggested that topics prohibited from discussion often assume greater importance than they should.¹²⁰
- Allen Whitney, Executive Vice President of the IBPO; characterized the County’s refusal to discuss certain issues as an “ostrich-like position” given that no binding agreements emerge from the “meet and confer” process.¹²¹
- John Hardy, representing the Montgomery County Fire Fighters Association, suggested that limiting topics of discussion in “meet and confer” sessions would end up wasting people’s time, “it would save everybody’s time if we just send a memo down.”¹²²

At the October 1976 worksession, Personnel Director Lloyd expressed concern about setting a precedent by allowing discussion of “items that are the prerogative of management.”¹²³ The Council discussed the issue and decided, without objection, to delete the subsection of the bill excluding items from discussion during “meet and confer” sessions.¹²⁴

Before the Council’s December 14, 1976 final discussion on the bill, County Executive Gleason sent a memo to Council President Menke requesting that the Council include language in the bill prohibiting the inclusion of “management rights” issues in position papers.¹²⁵ The County Executive argued that:

Any employee relations bill without a management rights clause makes such legislation extremely defective in my view.... We have historically and will continue to discuss with employees and employee groups all matters of concern to them. Although such matters may be discussed, those concerning management rights should not proceed to the point of developing position papers any more than we would seek position papers on established employee rights.¹²⁶

¹¹⁵ Ibid.

¹¹⁶ Bill 23-76, § 36A-7(a), (b).

¹¹⁷ 7-14-76 Public Hearing Transcript at p. 12.

¹¹⁸ Ibid. at p. 12-13.

¹¹⁹ 7-14-76 Public Hearing Transcript at p. 19-20, 27, 36, 40-41.

¹²⁰ Ibid. at p. 27.

¹²¹ Ibid. at p. 19-20.

¹²² Ibid. at p. 36.

¹²³ 10-14-76 County Council Minutes at p. 13.

¹²⁴ Ibid.

¹²⁵ 12-10-76 Memorandum from County Executive Gleason to Council President Menke.

¹²⁶ Ibid.

MCCEO President James Mills informed the Council that County Executive Gleason's suggested language on management rights was "unacceptable in its entirety.... If adopted, it would limit labor's right to present its positioning written factual form to management. That could seriously hamper proper justification of labor's positions and make thoughtful indepth [sic] considerations required in problem solving extremely difficult."¹²⁷

At the Council's December 14, 1976 worksession, Councilmembers Christeller and Hovsepan disagreed with the County Executive's proposed language.¹²⁸ Following some debate, the Council included language in the final bill allowing the County and an employee organization to file position papers, either jointly or separately, following discussions.¹²⁹ The Council also included language stating that "the County shall not be obligated to concur in a position paper addressing the inherent right to manage the County government."¹³⁰ The final language in the bill that identified appropriate topics for discussion allowed discussion of "personnel policies, practices and matters affecting working conditions of the employee unit it represents, so far as discussions may be appropriate under existing laws or regulations" – with no excluded topics.¹³¹

County Participants in Meetings. All versions of Bill 11-76, including the final one adopted by the Council, required meetings between certified employee organizations and "County representatives."¹³² Exactly who constituted "County representatives" was not defined. The language proposed in Bill 23-76 to require meetings "with County representatives including the County Executive and County Council" was not incorporated into the final version of Bill 11-76.¹³³

E. Payroll Deductions

The final version of Bill 11-76, as adopted by the Council, allowed the County to deduct membership dues for a certified employee organization from an employee's paycheck with written authorization.¹³⁴ This provision was not in the first draft of Bill 11-76, but was in Bill 23-76.¹³⁵

At the public hearing on the bills, Assistant CAO Robert Carty supported payroll deductions if "the organization has been certified and represents a majority of the employees in the appropriate unit and providing that the deduction is not obligatory."¹³⁶ In his testimony at the public hearing, MCCEO President Mills objected to the omission of a dues check-off provision.¹³⁷

Following the public hearing, Personnel Director Lloyd recommended including language in Bill 11-76 allowing for, but not requiring, dues deductions "after discussions with an employee organization...."¹³⁸ The Personnel Board cautioned the Council to recognize potential costs

¹²⁷ 12-13-76 Mills Memo at p. 1.

¹²⁸ 12-14-76 County Council Minutes at p. 1455-1456.

¹²⁹ Final Bill 11-76, § 33-69(b).

¹³⁰ 12-14-76 County Council Minutes at 1456; Final Bill 11-76, § 33-69(b).

¹³¹ Final Bill 11-76, § 33-69(a).

¹³² Ibid. § 33-69(a).

¹³³ Bill 23-76, § 36A-7(a).

¹³⁴ Final Bill 11-76, § 33-66(j).

¹³⁵ See Bill 23-76, § 36A-5(j).

¹³⁶ 7-14-76 Public Hearing Transcript at p. 11.

¹³⁷ Ibid. at p. 25-26.

¹³⁸ 8-24-76 Lloyd Memo at p. 2.

associated with providing a “dues check-off,” including: control of input and payroll deduction information; periodic computer print-outs and reports; transfer of funds; record keeping; and other administrative costs. The Board recommended that allowing dues check-off “should be an administrative decision based on cost and feasibility.”¹³⁹

At the October 1976 Council worksession on the bills, Council President Christeller and Councilmembers Scull and Hovsepien supported allowing the County to provide dues deductions in a “meet and confer” system, but thought it should be an item for negotiation if the County developed a collective bargaining system.¹⁴⁰ MCGEO President Mills stated that the law should mandate dues check-off, noting that the County Government had refused to discuss with MCGEO allowing dues check-off in the past.¹⁴¹ Councilmember Menke suggested that the Council could mandate dues check-off in the future if the County Executive refused to provide it.¹⁴²

The second draft of Bill 11-76 gave the County Government the option to provide membership dues check-off with written authorization from an employee.¹⁴³ At the December 14, 1976 Council worksession, Councilmember Christeller made a motion to require the County to provide dues check-off.¹⁴⁴ Personnel Director Lloyd, once again, recommended giving the County Government discretion as to whether to provide this option.

Councilmember Christeller’s motion was defeated. As a result, the final bill did not change from the second draft of the bill and gave the County Government the option to provide membership dues check-off with written authorization from an employee.¹⁴⁵

F. Disputes

All versions of Bill 11-76, including the final version, provided that all decisions of the Chief Administrative Officer under the “Meet and Confer” law were final, “subject to appeal to the Montgomery County Personnel Board where provided by law.”¹⁴⁶

The corresponding section in Bill 23-76 had proposed that all decisions by the CAO were final, “subject to appeal to the Montgomery County Personnel Board which shall hold a hearing.”¹⁴⁷ In the public hearing, Assistant CAO Robert Carty noted that Bill 23-76 would make a Personnel Board hearing on a dispute under the “Meet and Confer” law mandatory, but that the Charter limited mandatory hearings by the Personnel Board to cases of dismissal, demotion, and suspension.¹⁴⁸

¹³⁹ 8-24-76 Schloo Memo at p. 9.

¹⁴⁰ 10-14-76 County Council Minutes at p. 10-11.

¹⁴¹ Ibid. at p. 10.

¹⁴² Ibid. at p. 11.

¹⁴³ 12-10-76 Schloo Memo at p. 9-10.

¹⁴⁴ 12-14-76 Council Minutes at p. 1455.

¹⁴⁵ Final Bill 11-76, § 33-66(j).

¹⁴⁶ Bill 11-76 Draft #1, § 33-71; Final Bill 11-76, § 33-71.

¹⁴⁷ Bill 23-76, § 36A-10.

¹⁴⁸ 7-14-76 Public Hearing Transcript at p. 13.

G. Option to Join an Employee Organization

The first drafts of Bills 11-76 and 23-76 both contained provisions regarding mandatory employee participation in employee organizations. Bill 11-76 provided that no employee would “ever be required” to join or pay money to an employee organization “except on a purely voluntary basis.”¹⁴⁹ Bill 23-76 provided that no employee would be required to join or pay money to an employee organization “except on a purely voluntary basis, *or as otherwise provided by law.*”¹⁵⁰

The final version of Bill 11-76, as adopted by the Council, contained the same language from the first draft, requiring that employees join and pay money to an employee organization only “on a purely voluntary basis.”¹⁵¹

¹⁴⁹ Bill 11-76 Draft #1, § 33-64(d).

¹⁵⁰ Bill 23-76, § 36A-3(d) (emphasis added).

¹⁵¹ Final Bill 11-76, § 33-64(d).

CHAPTER V. Establishing Collective Bargaining for Police Officers

Bill 71-81, enacted on April 6, 1982, established the first collective bargaining system for a group of Montgomery County employees – police officers. This Chapter summarizes the history of that law and is organized as follows:

- **Section I, Legislative History of Bill 71-81**, summarizes the legislative history of the Bill 71-81, including the adoption of Montgomery County Charter § 510; and
- **Section II, Major Legislative Issues**, reviews the primary issues discussed during the legislative process leading up to the adoption of Bill 71-81.

The table below provides key dates related to Bill 71-81.

Table 5-1. Key Dates for Bill 71-81

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|--------------------------------------|--|--------------------------|----------------------------|--------------------|
| Nov. 3, 1981 | January 14, 1982 January 25, 1982 | February 4, 1982 March 8, 1982 | April 6, 1982 | April 16, 1982 | July 16, 1982 |
| Bill Sponsored By: | | Council President at the Request of County Executive Gilchrist | | | |

Summary of Major Provisions in Bill 71-81, as Adopted in 1982

Bill 71-81 allowed an employee organization elected by police officers to bargain with the County Government over wages, hours, and other terms and conditions of employment.¹ Among other things, Bill 71-81:

- Allowed a certified employee organization the exclusive right to bargain on behalf of employees for issues such as: salaries and wages; pension and retirement benefits; hours and working conditions; and the effect on employees of the County Government’s exercise of “employer rights;”
- Allowed an employee organization to bargain for an agency shop provision – which requires an employee to pay union dues or an equivalent fee to a union, regardless of whether the employee joined the union;
- Allowed a neutral individual (an “Impasse Neutral”) to resolve – through binding arbitration – impasses in bargaining between an employee organization and the County Government; and
- Allowed the Council to approve or disapprove provisions of a collective bargaining agreement that required appropriation of funds or enactment, repeal, or modification of County law.

¹ Final Bill 71-81, § 33-75.

On April 6, 1982, the Council voted unanimously (7-0) to enact the final version of Bill 71-81.² The Councilmembers at the time were Rose Crenca, Scott Fosler, Esther Gelman, Michael Gudis, Neal Potter, David Scull, and Ruth Spector.

I. LEGISLATIVE HISTORY OF BILL 71-81

Adoption of Montgomery County Charter § 510. In the November 1980 general election, Montgomery County voters approved a ballot question (67 percent voting in the affirmative) to add a new section to the Montgomery County Charter requiring the Council to enact a collective bargaining law for police officers. Before this Charter provision was added, the Council lacked the legal authority to enact collective bargaining legislation for any County employees.³

The new section of the County Charter, entitled *Collective Bargaining*, stated:

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers. Any law so enacted shall prohibit strikes or work stoppages by police officers.⁴

The ballot provision was sponsored by a group of Montgomery County police officers – Citizens for Effective Law Enforcement (CELE) – working in conjunction with the Fraternal Order of Police (FOP). At the Charter Review Commission’s public hearing on the proposed ballot question, Richard Svertesky, speaking on behalf of the Montgomery County FOP Lodge 35, testified that the ballot measure was initiated because the “meet and confer” process ha[d] “proven to [be] an unworkable process.” Mr. Svertesky asserted that:

[T]he individual making the rules also enforces them.... [a]fter the issues are raised there is no process for resolving them.... Meet and Confer type labor relations is nothing more than an employee suggestion box with the anonymity removed.⁵

Mr. Svertesky further testified that “[n]othing short of collective bargaining is sufficient in providing an[] opportunity for meaningful discussions between employer and employee....”⁶

² 4-6-82 County Council Legislative Minutes at p. 3899.

³ See County Attorney Opinion #74.140 (Sept. 13, 1974).

⁴ Charter of Montgomery County, Maryland, § 510, adopted November 4, 1980.

⁵ 9-30-80 Charter Review Commission Public Hearing Transcript at p. 6-7.

⁶ *Ibid.* at p. 5-6.

The Fraternal Order of Police's Change in Position on Binding Interest Arbitration.

Before the November 1980 election, representatives of the FOP Lodge 35 told the Charter Review Commission that despite the proposed Charter language, police officers were not seeking "binding interest arbitration."⁷ Allan Katz, an attorney for the FOP, clarified that the FOP's original intent was to provide for binding arbitration for disputes that arise out of the interpretation of an established collective bargaining agreement (i.e., grievances), not for binding arbitration of "interest issues" that make up the agreement, i.e., salaries, cost of living adjustments, benefits.⁸

After the Charter amendment was adopted and the Council introduced legislation to implement the Charter amendment, Mr. Katz testified at a public hearing on the bill that the FOP had changed its position and was now seeking "binding interest arbitration."⁹ Mr. Katz explained that County Executive Charles Gilchrist interpreted the ballot language to require binding interest arbitration and that the FOP concurred with the County Executive's position.¹⁰

Two individuals who spoke at the public hearings on Bill 71-81 (Jim Goeden, from the Bethesda-Chevy Chase Chamber of Commerce, and Tom Israel, a former member of the Board of Education, respectively) questioned the manner in which the ballot measure and its implications were explained to voters, referring to the ballot measure as an "ethically questionable campaign to present this as a no-strike amendment" and alleging that voters "have been had on this matter."¹¹

At the Council's March 1982 worksession on Bill 71-81, Councilmember Scull asked Mr. Katz to "justif[y] his change of position from one of saying that the Police had no desire to arbitrate interest issues to the opposite position."¹² Mr. Katz explained:

[Citizens for Effective Law Enforcement] was made up of members of the FOP, but not the entire membership.... When the matter came before the Council at the end of November 1980, the leadership of CELE felt it was speaking for the Police in taking a position for binding arbitration on financial matters and not on interest issues. Six days later ... at a meeting of the FOP, the members took up this issue and the minutes of that meeting clearly reflect that the FOP was in favor of including interest arbitration; CELE sponsors of the bill went along with the FOP position and it was thereafter reflected that way. For the record, the FOP officials met with the Executive prior to the election to make clear to him that the Police were asking for interest arbitration also.¹³

⁷ Ibid. at p. 13-16, 23-24.

⁸ Ibid. at p. 13-14, 23.

⁹ 1-25-82 Public Hearing Transcript at p. 38-39.

¹⁰ Ibid.

¹¹ 1-14-82 Public Hearing Transcript at p. 14, 17-18.

¹² 3-8-82 County Council Minutes at p. 5. Similarly, at the second public hearing on Bill 71-81 Councilmember Fosler asked Mr. Katz about the "change in interpretation" regarding arbitration following the Charter Review Commission hearing. See 1-25-82 Public Hearing Transcript at p. 37-38.

¹³ 3-8-82 County Council Minutes at p. 5.

Collective Bargaining Legislation. After the Charter amendment was passed in November 1980, County Executive Gilchrist entered into negotiations with the FOP to discuss the legislation to be proposed to implement the Charter amendment.¹⁴ In June 1981, the Council received a briefing on public sector labor relations “to review the principles that have evolved in public sector collective bargaining” and to discuss implementation of Charter § 510.¹⁵

In October 1981, County Executive Gilchrist sent proposed collective bargaining legislation to the Council that, in his words, “represents a fair and responsible approach to the conduct of police collective bargaining in the County government”¹⁶ The Council held two public hearings on the bill in January 1982.

Executive Branch representatives and the FOP continued working on the bill and submitted a second draft to the Council before the second public hearing. At the Council’s second public hearing, Edward Rovner, speaking on behalf of the County Executive, testified that most changes in the second draft were agreed upon by the Executive Branch and the FOP. On issues where there was no agreement, the second draft reflected the County Executive’s positions.¹⁷

Commenting on the second draft of the bill, George Driesen, speaking on behalf of FOP Lodge 35, stated that “[w]ith the changes we have proposed, we think the ordinance will provide a useful mechanism for resolving problems and establishing wages and working conditions that are fair to the police and the citizens they serve.”¹⁸ Kathy Dolan – representing the Employee Organization Task Force – supported the legislation and asked the Council to expand the bill to all Montgomery County employees.¹⁹

Following the public hearings, the Council held two worksessions on Bill 71-81 – in February and March 1982. The Council passed the final version of the bill in April 1982.

¹⁴ 1-25-82 Public Hearing Transcript at p. 4.

¹⁵ 6-26-81 County Council Minutes at p. 1. In June 1981, the Council’s Legislative Counsel, David Frankel, questioned the Council’s authority to enact collective bargaining legislation based on the Charter amendment. See 8-31-81 Memorandum from David Frankel, Legislative Counsel, to Councilmembers Fosler and Scull. In 1980 the Maryland Court of Appeals ruled that a charter amendment could not “serve or function as a vehicle through which to adopt local legislation.” *Cheeks v. Cedlair Corp.*, 287 Md. 595 (1980). On that basis, Mr. Frankel asserted that the purpose of the Charter amendment was to compel the Council to enact legislation, seemingly in conflict with the *Cheeks* case. OLO found no further references to Mr. Frankel’s memo or argument in the bill file. In a public hearing on the bill, the testimony of Jim Goeden – representing the Bethesda-Chevy Chase Chamber of Commerce – echoed Mr. Frankel’s argument.

¹⁶ 10-22-81 Memorandum from Charles Gilchrist, County Executive, to Ruth Spector, Council President at p. 1.

¹⁷ 1-25-82 Public Hearing Transcript at p. 4-5.

¹⁸ *Ibid.* at p. 34.

¹⁹ *Ibid.* at p. 20. Ms. Dolan testified that only the FOP successfully organized under the “meet and confer” law and attributed that “in large part ...to the restrictions and limitations inherent in the [“meet and confer”] law.” *Ibid.* at p. 21.

II. MAJOR LEGISLATIVE ISSUES

The final version of Bill 71-81 addressed numerous issues, including:

- Subjects for collective bargaining;
- The collective bargaining process;
- Impasse procedures;
- Establishing a “Permanent Umpire;”
- Defining the term “employee;”
- Employee rights;
- Prohibited practices;
- A prohibition on strikes and lockouts;
- Election of a Certified Representative;
- Agency shop provisions;
- Employee representation in grievances; and
- Payment of election costs.

This section summarizes these issues.

A. Subjects for Collective Bargaining

Summary of Legislation. During the legislative process, the Council discussed which subjects the collective bargaining law should allow an employee organization and County representatives to bargain over. Adhering to the recommendations of the County Executive’s and FOP’s representatives, the Council changed the way the bill identified and defined bargainable issues twice between the first and final drafts of the bill. The tables (beginning on page 49) track the major amendments (by issue) adopted during the Council’s consideration of four drafts of the legislation.

The first draft of Bill 71-81 divided collective bargaining subjects as follows:

- Subjects over which the parties had to bargain;
- Subjects prohibited from discussions or bargaining; and
- “Employer rights” that the County – at its discretion – could choose to discuss, but over which it could not bargain.²⁰

The second draft of the bill – submitted by the County Executive to the Council before the second public hearing on the bill in January 1982 – changed this scheme. “Prohibited” subjects and “employer rights” in the first draft of the bill became “permissive” subjects in the second

²⁰ Bill 71-81 Draft #1, § 33-80(a)-(c).

draft over which the County Government could – at its own discretion – choose to bargain.²¹ In the case of the “employer rights,” the County could bargain over the “effects upon employees of the employer’s exercise of [the ‘employer rights’].”²² Specifically, this second draft proposed the following:

- If the parties bargained over a “permissive” issue and reached an agreement, the agreement would be included in a subsequent collective bargaining agreement;
- If the parties could not reach an agreement, the second draft prohibited submitting those subjects to binding arbitration;
- If the parties disagreed about whether a specific issue was “mandatory” or “permissive,” the Permanent Umpire could decide the questions, and that decision would be binding on the parties.²³

The Council received a third draft of the bill (prepared by Council staff with amendments agreeable to County Executive staff) just before the Council’s second worksession on the bill in March 1982. The subjects for collective bargaining did not change between the second and third drafts.²⁴ At the worksession, however, the Council received new draft language prepared by Special Counsel Hillman, representing the Executive Branch, “in an effort to work out language more acceptable to all parties.”²⁵ This draft language outlined a different scheme for identifying bargainable subjects.²⁶

This next version abandoned the “mandatory bargaining issue”/“permissive bargaining issue” scheme in the earlier drafts of the bill. The new language:

- Listed mandatory bargaining issues;
- Listed “employer rights” that were not subject to bargaining; and
- Eliminated the third section of the law that prohibited the bargaining of certain issues.²⁷

Special Counsel Hillman reported that this new language was acceptable to the FOP, except for a provision including the right to transfer, assign, and schedule employees as an employer right, not subject to bargaining.²⁸

²¹ Bill 71-81 Draft #2, § 33-80(d)(1). Along with his public hearing testimony, FOP attorney George Driesen submitted suggested amendments to the section of the law defining topics for collective bargaining. The FOP recommended the following topics for bargaining: “wages, hours, and other terms and conditions of employment” See Statement of George B. Driesen on Behalf of the Fraternal Order of Police, Montgomery County Lodge 35 Before the Montgomery County Council, January 14, 1982 at Exhibit II. The Council did not incorporate any of the FOP’s suggested language into the final bill.

²² Bill 71-81 Draft #2, § 33-80(d)(1); see also 1-25-82 Public Hearing Transcript at p. 8-9.

²³ Ibid. § 33-80(d)(1)-(2); see also 1-25-82 Public Hearing Transcript at p. 9.

²⁴ See 3-5-82 Memorandum from David Frankel, Legislative Counsel, to County Council at ©1.

²⁵ 3-8-82 County Council Minutes at p. 1.

²⁶ Ibid.

²⁷ Ibid. at p. 1-2.

²⁸ Ibid. at p. 4.

The third draft of the bill also added two new subjects as required bargaining issues:

- Matters affecting the health and safety of employees; and
- Effects on employees of the employer's exercise of employer rights.

This second subject is the so-called "effects bargaining" provision of the current Police Labor Relations law.

The Council received a fourth draft of the bill from Council staff in preparation for its April 6, 1982 legislative session, during which the Council enacted the final version of Bill 71-81. Ultimately, the language describing bargainable subjects and "employer rights" underwent only minor changes from the March 1982 worksession to the Council's passage of the final version of the bill.

Comparison of Language in Draft Bills. Tables 5-2, 5-3, and 5-4, beginning on the next page, document the progression of the "collective bargaining" language through the different drafts of the bill. The tables include language (or paraphrased language) from the first, second, third, and final drafts of the bill, and from the language reviewed at the Council's March 1982 worksession.

The tables show the language from the first through final drafts of the bill. In reviewing the tables:

- Writing with a grey background connotes changed language from one draft of the bill to the next;
- A blank grey box indicates that language was deleted; and
- An arrow through a box indicates that language in that box did not change from the prior box.

In the example below, the language did not change between the first and second draft, but the Council added the word "only" to the third draft.

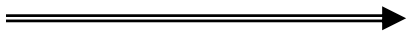
| Draft #1 | Draft #2 | Draft #3 |
|--|--|---|
| Pension and retirement benefits for active employees |  | Pension and retirement benefits for active employees only |

Table 5-2. Progression of Language in Bill 71-81 Identifying Issues for Collective Bargaining

| Issues for Collective Bargaining | | | | |
|---|--|----------|---|---|
| Draft #1 | Draft #2 | Draft #3 | March 1982 Worksession Draft | Final Bill |
| Salary and wages , provided, however, that salaries and wages shall be uniform for all employees in the same classification | | | | Salary and wages , provided, however, that salaries and wages shall be uniform for all employees in the same classification |
| Pension and retirement benefits for active employees | | | | Pension and retirement benefits for active employees only |
| Employee benefits (e.g., insurance, leave, holidays, vacation) | Employee benefits (e.g., insurance, leave, holidays, vacation, and personal patrol vehicles) | | Employee benefits (e.g., insurance, leave, holidays, vacation) | Employee benefits (e.g., insurance, leave, holidays, vacation) |
| Hours and working conditions | | | Hours and working conditions, including the availability and use of personal patrol vehicles | Hours and working conditions, including the availability and use of personal patrol vehicles |
| Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration | Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration. The grievance provisions of any collective bargaining agreement, notwithstanding the provisions of section 33-12(b) of this chapter, shall be the exclusive means of processing grievances concerning any subject matter enumerated in [this section] or any matter enumerated in [the two sections below], about which the parties have voluntarily bargained during the bargaining immediately prior to the current contract. | | Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum | Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum |
| | | | Matters affecting the health and safety of employees | Matters affecting the health and safety of employees |
| | | | The effect on employees of the employer's exercise of [employer] rights enumerated [in the subsection below] | The effect on employees of the employer's exercise of [employer] rights enumerated [in the subsection below] |




Table 5-3. Progression of Language in Bill 71-81 Identifying Issues Prohibited from Collective Bargaining

| Issues Prohibited from Collective Bargaining | | | | |
|---|--|---|------------------------------|------------|
| Draft #1 | Draft #2 | Draft #3 | March 1982 Worksession Draft | Final Bill |
| Pensions or any other matter related to retired persons | Pensions or any other matter related to persons who have retired | → | | |
| Recruitment, selection, appointment, testing, promotion, position classification, or any other rule or action of the employer based on merit principles | Recruitment, selection, appointment, testing, promotion, and position classification | → | | |
| Any matter which is the subject of state law, including, but not limited to, the Law Enforcement Officers Bill of Rights | → | Any matter which would be in conflict with or preempted by state law including, but not limited to, the Law Enforcement Officers Bill of Rights | | |
| Any matter which would impair the rights of the employer as set forth in [the subsection below] | → | Any matter which would impair the rights of the employer as set forth below | | |

Table 5-4. Progression of Language in Bill 71-81 Identifying Employer Rights

| Employer Rights | | | | |
|---|---|--|--|--|
| Draft #1 (County could voluntarily discuss “employer rights” with an employee organization to develop policies for or to implement rights) | Draft #2 (County could decide to voluntarily bargaining over “employer rights” or effects on employees, but impasses over these issues were not subject to binding arbitration) | Draft #3 (County could decide to voluntarily bargaining over “employer rights” or effects on employees, but impasses over these issues were not subject to binding arbitration) | March 1982 Worksession Draft (County could decide to voluntarily discuss County’s exercise of “employer rights,” but these rights were prohibited from bargaining) | Final Bill (County could decide to voluntarily discuss County’s exercise of “employer rights,” but these rights were prohibited from bargaining) |
| It is the right and responsibility of the County Government: | | | | |
| To determine the overall mission of the employer and any agency of County Government | | | To determine the overall budget and mission of the employer and any agency of County Government | To determine the overall budget and mission of the employer and any agency of County Government |
| To maintain and improve the efficiency of operations | | | | To maintain and improve the efficiency and effectiveness of operations |
| To determine services to be rendered, the operations to be performed, and the technology to be utilized | | | To determine services to be rendered and operations to be performed | To determine services to be rendered and operations to be performed |
| To determine the overall methods, processes, means, job classifications or personnel by which operations are to be conducted and to prescribe and restrict the utilization of uniforms, vehicles, and equipment | To determine the overall methods, processes, means, job classifications or personnel by which operations are to be conducted and to prescribe and restrict the utilization of uniforms, vehicles, and equipment other than personal patrol vehicles | | To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted, and the location of facilities | To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted, and the location of facilities |
| To direct or supervise employees | | | | To direct or supervise employees |
| To suspend, discipline or discharge employees | To suspend, discipline or discharge employees subject to applicable law | | | |
| To transfer, assign, schedule, retain, layoff, or recall employees | | | To transfer, assign, and schedule employees | To transfer, assign, and schedule employees |
| To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive | | | | To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive |

Table 5-4. Progression of Language in Bill 71-81 Identifying Employer Rights (Cont.)

| Employer Rights | | | | |
|--|--|--|---|---|
| Draft #1 (County could voluntarily discuss “employer rights” with an employee organization to develop policies for or to implement rights) | Draft #2 (County could decide to voluntarily bargaining over “employer rights” or effects on employees, but impasses over these issues were not subject to binding arbitration) | Draft #3 (County could decide to voluntarily bargaining over “employer rights” or effects on employees, but impasses over these issues were not subject to binding arbitration) | March 1982 Worksession Draft (County could decide to voluntarily discuss County’s exercise of “employer rights,” but these rights were prohibited from bargaining) | Final Bill (County could decide to voluntarily discuss County’s exercise of “employer rights,” but these rights were prohibited from bargaining) |
| It is the right and responsibility of the County Government: | | | | |
| To make and enforce rules and regulations not inconsistent with a collective bargaining agreement | To make and enforce rules and regulations not inconsistent with a collective bargaining agreement and applicable law |  | | To make and enforce rules and regulations not inconsistent with this ordinance or a collective bargaining agreement |
| To take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement |  | | | |
| To take actions to carry out the mission of government in situations of emergency |  | | | To take actions to carry out the mission of government in situations of emergency |
| | | | To hire, select and appoint and establish the standards governing promotion of employees and to classify positions | To hire, select and establish the standards governing promotion of employees and to classify positions |

Source: Bill 71-81 Draft #1, § 33-80(a)-(c); Bill 71-81 Draft #2, § 33-80(a)-(c); Bill 71-81 Draft #3, § 33-80(a)-(c); 3-8-82 County Council Minutes at 1-2; § 33-80(a), (b); Final Bill 71-81, § 33-80(a), (b)

Public Hearing Testimony. Several individuals who testified at the public hearings on Bill 71-81 in January 1982 discussed the issues subject to bargaining (or not) in the bill. The County Executive transmitted a second draft of the bill to the Council right before the second public hearing.

Robert Hillman, Special Counsel to the County Executive, testified that the second draft did not prohibit any subjects from discussion. Mr. Hillman explained that the permissive subjects designated in the bill were “management rights,” and the parties could discuss the effects of the County’s exercise of those rights.²⁹

In his testimony, FOP attorney George Driesen characterized the “bargainable” subjects identified in the first and second drafts of the bill as “narrow” and a “serious deficiency” in the law.³⁰ He stated:

[T]he purpose of collective bargaining is to provide a means of exchanging ideas that will accomodate [sic] management’s objectives and employees’ needs. That’s what it’s all about. This statute virtually makes the exchange impossible because of the very narrow scope of bargaining that is left after all the management rights and other prohibitions in the ordinance are taken into consideration.³¹

Mr. Driesen testified that some of the issues that led the police to seek collective bargaining through a Charter amendment – such as schedules, transfers, technology, and promotions – were not included in the bill as mandatory bargaining issues.³²

Montgomery County Education Association President David Eberly similarly recommended that the Council not restrict subjects for bargaining.³³ John Fiscella, a private consultant on problems in public sector labor relations speaking at the public hearing as an individual, supported a wide range of negotiable issues, commenting that “[a] very narrow scope reduces the significance of collective bargaining.”³⁴

February 4, 1982 Council Worksession. At the Council’s first worksession on Bill 71-81, in February 1982, the Council reviewed language in the second draft of the bill. The discussion included debate over what topics should be subject to bargaining, mandatory or otherwise.

With respect to bargaining over police salaries and wages, Councilmember Crenca expressed a desire for an “across-the-board” comparison on wages and benefits for all Council-funded employees “in the light of fair play.”³⁵ Responding, Mr. Driesen noted that the 1980 Charter amendment required collective bargaining for police officers – not other groups – and suggested the Council develop a “workable” collective bargaining law for police officers.³⁶

²⁹ 1-25-82 Public Hearing Transcript at p. 17.

³⁰ Ibid. at p. 28.

³¹ Ibid. at p. 30-31.

³² Ibid. at p. 28-30.

³³ 1-14-82 Public Hearing Transcript at p. 7-8.

³⁴ Ibid. at p. 28.

³⁵ 2-4-82 County Council Minutes at p. 4.

³⁶ Ibid. at p. 4.

Councilmember Fosler asked about experience in specifically excluding items from collective bargaining.³⁷ Special Counsel Hillman responded with the example that it is impractical to have an arbitrator decide police assignments, which were included in the law as a “permissive” bargaining subject not subject to binding arbitration.³⁸

Mr. Driesen, representing the FOP, countered that all issues should be subject to bargaining – including uniforms, vehicles, and equipment – and that the “permissive” issues “are invitations to litigation.” Mr. Driesen noted that ten states have no restrictions on subjects for collective bargaining.³⁹

Councilmember Gelman questioned why the classification of officers’ personal patrol vehicles (PPVs) was changed from police equipment (no bargaining) in the first draft to employee benefits (mandatory bargaining) in the second draft.⁴⁰ Councilmember Gelman and Council President Potter expressed the view that PPVs should not be subjects of mandatory bargaining.⁴¹

Edward Rovner, representing the Executive Branch, noted that the language in the second draft would allow the County Executive to bargain changes to the PPV policy.⁴² Mr. Driesen commented that PPVs affect officer’s working conditions, and should be subject to bargaining.⁴³

March 8, 1982 Council Worksession. Before the Council’s March 8, 1982 worksession on Bill 71-81, the Council received a third draft of the bill prepared by Council staff with amendments agreeable to County Executive staff.⁴⁴

At the worksession, the Council received draft language (prepared by Special Counsel Hillman) for the section of the law addressing the subjects for collective bargaining that was different from the language in the third draft of the bill received days earlier.⁴⁵ Special Counsel Hillman reported that the new draft language was acceptable to the FOP, except for the provision including the right to transfer, assign, and schedule employees as an employer right not subject to bargaining.⁴⁶

This worksession draft of the bill divided subjects into two categories: (1) subjects over which the parties could collectively bargain; and (2) “employer rights” that the parties could discuss but over which they could not bargain. This draft of the bill also added as a bargaining issue the effects on employees of the employer’s exercise of “employer rights.”

³⁷ Ibid. at p. 4.

³⁸ Ibid. at p. 5.

³⁹ Ibid. at p. 4-5.

⁴⁰ Ibid. at p. 5.

⁴¹ Ibid. at p. 5-6.

⁴² Ibid. at p. 5.

⁴³ Ibid. at p. 6.

⁴⁴ See 3-5-82 Memorandum from David Frankel, Legislative Counsel, to County Council at ©1.

⁴⁵ 3-8-82 County Council Minutes at p. 1.

⁴⁶ Ibid. at p. 4.

Councilmembers discussed the addition of “effects bargaining” at length. Councilmembers Scull and Fosler asked how to distinguish between an employer’s right and the effect on an employee of an employer’s exercise of rights.⁴⁷ They received the following examples:

- From Personnel Director Clinton Hilliard: Management has the right to layoff employees, but an employee organization would be able to negotiate how to accomplish the layoff.⁴⁸
- FOP attorney Driesen: Management has the right to assign police employees to cover domestic relations calls, but an employee organization could negotiate access to a psychiatrist for these employees because domestic relations calls place additional strain on employees.⁴⁹
- Special Counsel Hillman: “Management has the right to close a plant, but it has an obligation to discuss the effects of the plant closing with the employees; i.e., will the employees be given a chance to transfer? Will they receive severance pay? And so forth. The plant may be closed even though it takes a longer time to negotiate the effects.”⁵⁰

Councilmember Scull characterized this provision of the law as “vague,” predicted difficulties in resolving disputes, and advocated “precision and specificity ... relative to what can be carried to arbitration.”⁵¹ Mr. Driesen responded that the “FOP acquiesced in the management rights enumerated, but the effects of those rights become negotiable.”⁵²

Councilmember Scull subsequently commented that the changes in the draft “have come from the Executive ... at the request of the Police and represent some weakening of the County’s positions.”⁵³ Mr. Driesen responded that “the FOP acquiesced, reluctantly, with respect to bargaining about transfers, assignments and schedules which are clearly working conditions”⁵⁴ In turn according to Mr. Driesen, “the Executive has listened to many of [FOP’s] concrete ideas and there has been cooperation; professionals have tried to reach compromises on the provisions of the legislation that all parties can live under.”⁵⁵

Councilmember Fosler praised the County Executive for drawing a clear line between issues that can be bargained and issues that cannot.⁵⁶ He supported eliminating ambiguity in the law and supported the concept of bargaining over the effects on employees of an exercise of employer rights.⁵⁷

⁴⁷ Ibid. at p. 4, 6.

⁴⁸ Ibid. at p. 4.

⁴⁹ Ibid.

⁵⁰ Ibid. at p. 6.

⁵¹ Ibid. at p. 5.

⁵² Ibid. at p. 5-6.

⁵³ Ibid. at p. 7.

⁵⁴ Ibid. at p. 8.

⁵⁵ Ibid.

⁵⁶ Ibid. at p. 6.

⁵⁷ Ibid.

Councilmember Fosler also encouraged discussion by the parties outside the bargaining process as allowed in the law because “employees know a great deal about the practical problems involved in running the Department.”⁵⁸ He believed that “the way the legislation is written will go a long way to set the proper tone in a department where everyone has a common interest in having the department run effectively.”⁵⁹

Councilmember Crenca asked whether “effects bargaining” would lead to impasses during negotiations.⁶⁰ Mr. Hillman indicated that even though “there will always be ambiguities regarding the effects on employees of the exercise of management rights,” the law allows a neutral person to decide an issue if an impasse arises.⁶¹

Councilmember Fosler asked about the FOP’s desire to include transfers, assignments, and scheduling as bargainable issues.⁶² On behalf of the FOP, Mr. Katz responded that being able to bargain over transfers, assignments, and scheduling was very important to the police and “has been a major sticking point over the past years.”⁶³ Councilmember Crenca commented that before supporting a Charter amendment mandating collective bargaining the police “tried to make a point and no one wanted to listen so the Council must address the results.”⁶⁴

With respect to bargaining over personal patrol vehicles, Councilmember Fosler objected to including personal patrol vehicles as a negotiated item under “hours and working conditions,” noting that the program allowing police to take patrol vehicles home was not started to be a police benefit, but to allow police to respond more quickly to calls for service.⁶⁵ Edmund Rovner, representing the County Executive, stated the Executive’s position that vehicles should be within the scope of bargaining because:

[The] vehicles are a precise means by which the police accomplish their work ... [and] police have arranged facets of their personal life around the use of these vehicles ... [T]he Executive has decided that when their use is called into question, there should be collective bargaining. The moment the existing equation shifts, before the vehicles are taken away, the Executive believes there should be negotiation⁶⁶

“[Councilmember] Fosler asked that it be made clear that the expectation is that these personal patrol vehicles are of equal value to the officers and the public; if this comes into question, bargaining follows.”⁶⁷

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid. at p. 7.

⁶¹ Ibid.

⁶² Ibid. at p. 6.

⁶³ Ibid. at p. 6-7.

⁶⁴ Ibid. at p. 7.

⁶⁵ Ibid. at p. 13.

⁶⁶ Ibid.

⁶⁷ Ibid.

April 6, 1982 Council Legislative Session. The Council received a fourth draft of the bill (from Council staff) in preparation for its April 6, 1982 legislative session where it enacted Bill 71-81. The fourth draft, however, did not accurately reflect the language about collective bargaining subjects discussed by the Council in its March 1982 worksession and staff had to provide a corrected version for the Councilmembers.⁶⁸ Before enacting Bill 71-81, the Council continued discussion of the “effects bargaining” provision and other bargaining subjects.

Councilmember Fosler stated that he had a different opinion than the County Executive of the meaning of “effect on employees:”

[Personnel Director] Hilliard would draw a distinction between the decision itself (such as a decision to lay off employees), and the way in which the decision is implemented (which employees to lay off first). The former would be prohibited, but the latter would be bargainable in Mr. Hilliard’s interpretation.⁶⁹

Councilmember Fosler, however, believed that “the employer’s rights extend to the implementation of the decisions; the ‘effect’ is the consequence of the implementation.”⁷⁰ Councilmember Fosler indicated that the legislative history of Bill 71-81 should clearly reflect that:

[T]he Council defines ‘effect’ [referring to the ‘effect on employees of the employer’s exercise of rights’] in a restrictive sense. The work shall not be used as a way of initiating collective bargaining over any items that are employer rights. If the interpretation is expanded, the Council will have to consider amendments to the law.⁷¹

Councilmember Scull agreed, noting that the language referring to “effects” was vague, unnecessary, and that an employer “cannot do anything that does not have an effect on employees.”⁷² He also noted that “establishing a legislative history does not have the force and effect of law; it reflects only the views of Councilmembers. Every word used in labor relations law is significant.”⁷³

Councilmember Scull moved that the “effects bargaining” language be deleted from the bill.⁷⁴ His motion failed, with Councilmembers Scull and Gelman voting for the motion, Councilmembers Potter, Fosler, and Crenca voting against the motion, Councilmember Gudis not voting, and Councilmember Spector not present.⁷⁵

Council President Potter acknowledged the language may be vague, but believed “it would be disadvantageous” to exclude too much from allowable negotiations.⁷⁶ Councilmember Fosler recommended watching the law’s implementation and, if necessary, modifying the law in the future.⁷⁷

⁶⁸ See 4-2-82 Memorandum from David Frankel, Legislative Counsel, to County Council at ©18-20.

⁶⁹ 4-6-82 County Council Legislative Minutes at p. 3864-3865.

⁷⁰ Ibid. at p. 3865.

⁷¹ Ibid. at p. 3866.

⁷² Ibid. at p. 3867.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid. at p. 3868.

⁷⁶ Ibid.

⁷⁷ Ibid.

Before enacting the bill, the Council clarified that collective bargaining for pension and retirement benefits applied to benefits for active employees only.⁷⁸ The Council also rejected a suggested change to add language clarifying that the list of topics for collective bargaining was exclusive, reasoning that some unforeseen items may arise in the future.⁷⁹

As indicated above, on April 6, 1982, the Council voted unanimously (7-0) to enact the final version of Bill 71-81.⁸⁰

B. Collective Bargaining Process

Summary of Legislation. Bill 71-81 established a process and a timeline for an employee organization and the County Government to develop collective bargaining agreements. The final version of Bill 71-81, as adopted in July 1982, assigned discrete roles to the County Executive and the County Council as follows:

- The County Executive negotiated the agreement with a certified employee organization; and
- The Council approved or disapproved those portions of a contract that require appropriation of funds or enactment, modification, or repeal of a County law.⁸¹

Before arriving at this final division of responsibilities, the Council considered a series of legislative drafts and amendments to the process by which the Council approves or disapproves portions of a collective bargaining agreement.

The first draft of Bill 71-81:

- Required the employer (the County Executive and designees) and a certified representative (an employee organization elected to represent a group of employees) to collectively bargain over certain issues;⁸²
- Established dates by which the parties had to complete certain parts of the collective bargaining process, including resolution of impasses;⁸³
- Required “ratification” (i.e., approval) of an agreement by the employer and employees in a bargaining unit;⁸⁴ and
- Required the County Executive to submit certain agreed-upon provisions of a ratified collective bargaining agreement to the Council and to “make a good faith effort to have such term[s] or condition[s] implemented by Council action”⁸⁵

⁷⁸ Ibid. at p. 3865.

⁷⁹ Ibid.

⁸⁰ 4-6-82 County Council Legislative Minutes at p. 3899.

⁸¹ Final Bill 71-81, § 33-80(g).

⁸² See Bill 71-81, Draft #1, §§ 33-79(a) (election of certified representative); 33-80(a) (parties to bargaining).

⁸³ Ibid. § 33-80(e)-(h).

⁸⁴ Ibid. § 33-80(g).

⁸⁵ Ibid. § 33-80(h).

The first draft of Bill 71-81 did not provide a mechanism for the Council to approve or disapprove terms or conditions of a ratified collective bargaining agreement. Rather, this draft required an agreement to have a provision that automatically reduced or eliminated benefits requiring Council approval if the Council did not take action to implement those benefits.⁸⁶

The second draft of Bill 71-81, submitted by the County Executive before the Council's second public hearing on the bill, amended the proposed process in order to give the Council the authority to approve or disapprove those portions of a contract that require appropriation of funds or enactment, modification, or repeal of a County law.⁸⁷ This second draft required the Council, after receiving a ratified agreement from the County Executive:

- To indicate its intention to appropriate funds or “otherwise implement the agreement by April 25th,” and
- If it intended to reject a part of the agreement, to state its reasons for doing so and appoint a representative to convey the Council's views to the parties.⁸⁸

If the Council intended to reject a portion of a contract requiring Council action, the law required the parties to return to the bargaining process to “attempt to negotiate an agreement acceptable to the Council,” to use impasse procedures to resolve impasses, and to submit a new agreement to the Council by May 10th.⁸⁹ The law still required a contract to have a provision that automatically reduced or eliminated benefits requiring Council approval if the Council did not take action to implement those benefits.⁹⁰

Table 5-5 summarizes the key dates established in this section of the bill. These dates did not change from the first draft of the bill to the final version adopted by the Council.

Table 5-5. Summary of Key Dates in the Collective Bargaining Process

| Collective Bargaining Step | Date by Which Action Required |
|---|--------------------------------------|
| Commence collective bargaining | November 1 |
| Conclude collective bargaining | January 20 |
| Resolution of collective bargaining impasse | February 1 |
| Council indicates intention to appropriate or otherwise implement an agreement, or its intention not to do so | April 25 |
| If Council rejects a term or condition of an agreement, parties must renegotiate or use impasse procedure and resubmit the results to the Council | May 10 |

Source: Final Bill 71-81, § 33-80(d)-(g)

⁸⁶ Ibid. § 33-80(h).

⁸⁷ Bill 71-81 Draft #2, § 33-80(h).

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

Comparison of Language in Draft Bills. Table 5-6, beginning on the next page, tracks the progression of the collective bargaining process through the different drafts of the bill.

The table shows the language from the first through final drafts of the bill. In reviewing the table:

- Writing with a grey background connotes changed language from one draft of the bill to the next;
- A blank grey box indicates that language was deleted; and
- An arrow through a box indicates that language in that box did not change from the prior box.

Table 5-6. Progression of Language in Bill 71-81 Defining the Collective Bargaining Process

| Collective Bargaining Process | | | | |
|--|----------|----------|--|--|
| Draft #1 | Draft #2 | Draft #3 | Draft #4 | Final Bill |
| Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. | | | | Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. |
| The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties. | | | | The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties. |
| Any collective bargaining agreement which contains a provision for automatic renewal or extension shall be void in its entirety unless such renewal or extension requires the consent of both parties. | | | Any provision for automatic renewal or extension of a collective bargaining agreement shall be void. | Any provision for automatic renewal or extension of a collective bargaining agreement shall be void. |
| No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end on June 30. | | | | No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end on June 30. |

Table 5-6. Progression of Language in Bill 71-81 Defining the Collective Bargaining Process (Cont.)


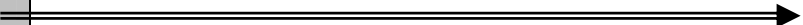

| Collective Bargaining Process | | | | |
|---|--|--|----------|---|
| Draft #1 | Draft #2 | Draft #3 | Draft #4 | Final Bill |
| Any collective bargaining agreement shall become effective only after ratification of the agreement by the public employer and the employees in the bargaining unit, except as provided in the subsection addressing resolution of impasses. | Any collective bargaining agreement shall become effective only after ratification of the agreement by the public employer and the certified representative, except as provided in the subsection addressing resolution of impasses. |  | | Any collective bargaining agreement shall become effective only after ratification of the agreement by the employer and the certified representative, except as provided in the subsection addressing resolution of impasses. |
| A certified representative may provide for its own rules for ratification procedures, but such rules shall be consistent with the certified representative's duty of fair representation. | A certified representative may provide for its own rules for ratification procedures. |  | | A certified representative may provide for its own rules for ratification procedures. |
| Any terms of a collective bargaining agreement which purport to restrict the rights of management and of the public as contained in the subsection on "employer rights" or which concern those subjects set forth in the subsection on topics prohibited from bargaining shall be null and void and wholly unenforceable. | |  | | |

Table 5-6. Progression of Language in Bill 71-81 Defining the Collective Bargaining Process (Cont.)

| Collective Bargaining Process | | | | |
|--|---|--|--|---|
| Draft #1 | Draft #2 | Draft #3 | Draft #4 | Final Bill |
| <p>A ratified agreement shall be binding on the employer and the certified representative.</p> <p>Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action ...</p> | <p>A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties.</p> | | | <p>A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties.</p> <p>Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action.</p> |
| | <p>On or before April 25, the County Council shall indicate by a majority of four (4) votes, its intention to appropriate or otherwise implement the agreement, or its intention not to do so, and shall state its reasons for any intent to reject any part or parts of the agreement. In the event the Council indicates its intention to reject, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible in an attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in section 33-81. The results of the negotiations or impasse procedure shall be submitted to the Council on or before May 10.</p> <p>Any agreement shall provide either for automatic reduction or elimination of such conditional wage and/or benefits adjustments if the Council fails to take such action or if funds are not appropriated or if a lesser amount is appropriated.</p> | <p>On or before April 25, the County Council shall indicate by a majority of four (4) votes, its intention to appropriate or otherwise implement the agreement, or its intention not to do so, and shall state its reasons for any intent to reject any part or parts of the agreement. In the event the Council indicates its intention to reject, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible in an attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in section 33-81. The results of the negotiations or impasse procedure shall be submitted to the Council on or before May 10.</p> | <p>On or before April 25, the County Council shall indicate, by a majority, its intention to appropriate or otherwise implement the agreement, or its intention not to do so, and shall state its reasons for any intent to reject any part or parts of the agreement. In the event the Council indicates its intention to reject, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible in an attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in section 33-81. The results of the negotiations or impasse procedure shall be submitted to the Council on or before May 10.</p> <p>Any agreement shall provide either for automatic reduction or elimination of such conditional wage and/or benefits adjustments if the Council fails to take such action or if funds are not appropriated or if a lesser amount is appropriated.</p> | |

Source: Bill 71-81 Draft #1, § 33-80(e)-(h); Bill 71-81 Draft #2, § 33-80(e)-(h); Bill 71-81 Draft #3, § 33-80(e)-(h); Bill 71-81 Draft #4, § 33-80(d)-(g); Final Bill 71-81, § 33-80(d)-(g)

Amendment to Collective Bargaining Process Recommended by the Fraternal Order of Police. In his written public hearing testimony, FOP attorney George Driesen submitted suggested amendments to Bill 71-81. These included amendments to the section of the bill describing the Council's role in the collective bargaining process.

The FOP's suggested process differed from the process proposed in Bill 71-81. In the FOP's version, if the Council did not indicate by a vote its intentions regarding a collective bargaining agreement by the date set in the law, "[t]he Council's failure to act with respect to an agreement ... shall constitute a commitment to appropriate the funds and enact legislation required to implement the agreement."⁹¹

The Council did not incorporate this suggestion into the final bill.

Public Hearings. Testimony at both public hearings addressed the collective bargaining process and the Council's role in it. The opinions expressed varied and included the following:

- David Eberly, President of the Montgomery County Education Association, spoke in favor of allowing the County Executive to bargain and ratify a collective bargaining agreement without Council involvement.⁹² He cited difficulty in bargaining for contracts with MCPS through multiple levels of bureaucracy.⁹³
- Jim Goeden, representing the Bethesda-Chevy Chase Chamber of Commerce, maintained that "elected officials and only elected officials should be responsible for the spending level of our county government."⁹⁴
- Special Counsel Robert Hillman testified that the Executive changed this section of the bill because based on his understanding of Charter § 305, the law could not authorize collective bargaining or binding arbitration that bound the Council.⁹⁵

According to Mr. Hillman, the second draft of the bill established a process that provides "a final decision by the Council. Since the Council under ... Section 305 of the charter has the power to enact the budget."⁹⁶

⁹¹ See Statement of George B. Driesen on Behalf of the Fraternal Order of Police, Montgomery County Lodge 35 Before the Montgomery County Council, January 14, 1982 at Exhibit I.

⁹² 1-14-82 Public Hearing Transcript at p. 8.

⁹³ Ibid.

⁹⁴ Ibid. at p. 15.

⁹⁵ 1-25-82 Public Hearing Transcript at p. 11-12.

⁹⁶ Ibid. at p. 13-14.

February 4, 1982 Council Worksession. The Council discussed the collective bargaining process in its two worksessions on Bill 71-81. In the Council's February 1982 worksession, Legislative Counsel David Frankel recommended deleting language from the Declaration of Policy portion of the law that, in his opinion, "implie[d] that the Council will appropriate all funds and enact any legislation required by a collective bargaining agreement."⁹⁷

Mr. Hillman recommended leaving this language in the Declaration of Policy because the law provided a mechanism for the Council to disapprove portions of a collective bargaining agreement, as described above.⁹⁸ Reiterating his public hearing testimony, Mr. Hillman explained that "[t]he contract is not binding on the Council;" the Council could "refer the contract back to the Executive ... and ask that portions of the contract be renegotiated for further consideration by the Council."⁹⁹

Responding to Councilmember Gelman's concern that the Executive would be contractually bound to spend the funds in the contract, Edward Rovner, representing the Executive Branch, reiterated that any contract would require automatic reduction or elimination of conditional terms if the Council did not approve them.¹⁰⁰ Council President Potter articulated "the Council's intent ... that the contract is not final until action is taken by the Council to fund the contract."¹⁰¹

March 8, 1982 Council Worksession. At Councilmember Spector's suggestion during the Council's March 1982 worksession, the Council continued its discussion of its role in approving collective bargaining agreements.¹⁰² Mr. Hillman reiterated the Council's opportunity under the law to indicate its intention to appropriate funds for a contract, or not – "the agreement is conditioned on the Council's action."¹⁰³ Councilmember Spector commented that "this procedure places the Council in a situation where it has to address the matter late in its budget deliberations, after not having been a party to the negotiations and after the negotiations have already taken place"¹⁰⁴

The minutes from this worksession include numerous points, not attributed to any specific individual, on this process. Some include:

- "[I]t is a 3-year agreement for which the Council may not want to commit for the last two years;"
- "[T]he bill provides no means of binding the council which gives the FOP pause as it may give up certain things to gain a 3-year agreement;"
- "[I]t would be unwise to have the Council meet with the parties in the bargaining process."
- [I]f the Council maintains an attitude of cooperation, the process will work, and this is something the Council, educated in labor relations, is likely to do."¹⁰⁵

⁹⁷ 2-4-82 County Council Minutes at p. 2.

⁹⁸ Ibid. at p. 3.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² 3-8-82 County Council Minutes at p. 8.

¹⁰³ Ibid.

¹⁰⁴ Ibid. at p. 9.

¹⁰⁵ Ibid.

Councilmember Scull asked the FOP representatives whether they would make a commitment not to try to overturn the procedures in court.¹⁰⁶ In response:

Mr. Driesen responded that the FOP is an organization, he and Mr. Katz are its attorneys. He could not make that commitment for the organization.... He is not in a position to say that the FOP will not litigate that position. He is representing a democratic organization which has a constitutional right to litigate.¹⁰⁷

Final Bill. Before enacting the bill, the Council made minor changes to the bill's language, including adding language to clarify that a collective bargaining agreement would provide for automatic reduction or elimination of conditional wages or benefits if the Council did not take action "necessary to implement the agreement."¹⁰⁸

C. Impasse Procedures

Summary of Legislation. Bill 71-81 established a process for resolving "impasses" in the collective bargaining process. An "impasse" occurs when bargaining parties reach a point where they cannot agree on an issue or issues. As enacted by the Council, Bill 71-81 established a process of "mediation and binding arbitration" to resolve impasses.

- "Mediation" is a process where a neutral individual (a "mediator") tries to help opposing parties reach a voluntary, negotiated resolution to a disagreement; and
- "Binding arbitration" is a process where a neutral individual (an "arbitrator") examines both sides of a disputed issue and makes a decision in favor of one side or the other that both sides have agreed to accept.

Few changes were made in this section of the bill from the first to the final draft and little substantive discussion occurred at the Council worksessions on this section of the bill.¹⁰⁹ Accordingly, this section of the report summarizes the language in the final draft of the bill, but does not chronicle the minor changes from the first to the final drafts.

The section of the bill on impasse procedures:

- Established the position of an "Impasse Neutral" – a contract employee responsible for mediating and arbitrating collective bargaining disputes between an employee organization and the County Government;
- Established a calendar for resolving collective bargaining impasses;
- Required the Impasse Neutral to try to broker an agreement through mediation if an impasse existed between the parties;

¹⁰⁶ Ibid. at p. 10.

¹⁰⁷ Ibid.

¹⁰⁸ 4-6-82 County Council Legislative Minutes at p. 3866.

¹⁰⁹ Compare Bill 71-81 Draft #1, § 33-81 with 4-6-82 County Council Legislative Minutes at p. 3889-3892.

- Gave the Impasse Neutral the power to choose between competing “final offers” of the parties if mediation was unsuccessful; and
- Established factors the Impasse Neutral must consider when picking a “final offer.”¹¹⁰

Table 5-7 summarizes key dates established in this section of the bill.

Table 5-7. Summary of Key Dates in the Impasse Resolution Procedure

| Impasse Procedure Step | Date by Which Action Required |
|--|-------------------------------|
| Parties choose an Impasse Neutral | November 10 |
| Impasse deemed to exist if parties have not reached an agreement | January 20 |
| Impasse Neutral must select the “more reasonable” final offer from the final offers submitted by the parties | February 1 |

Source: Final Bill 71-81, § 33-80(d)-(g)

Process Established for Resolution of Impasses. The law required the parties to choose an Impasse Neutral – either through agreement or through a process of the American Arbitration Association – before November 10th in any year in which the parties engaged in collective bargaining.¹¹¹ The parties split any fees or costs associated with hiring an Impasse Neutral.¹¹²

In the collective bargaining process, either party could declare an impasse at any time or, if the parties have not reached an agreement by January 20th, the law deemed an impasse to exist.¹¹³ The law required the Impasse Neutral to try to mediate impasses as a first step.¹¹⁴

If the Impasse Neutral decided that a “bona fide” impasse exists, the law established an arbitration process for the Impasse Neutral to use to resolve the impasse.¹¹⁵ This process includes the following steps:

- **Submission of “final offers.”** The Impasse Neutral requires each party to submit a “final offer.” At the Impasse Neutral’s discretion, the final offer can be either a complete draft of a proposed collective bargaining agreement or a “complete package proposal” – identifying only unresolved issues.¹¹⁶
- **Submission of evidence.** At the Impasse Neutral’s discretion, the Impasse Neutral can require the parties to submit evidence or make arguments in support of their proposal. The Impasse Neutral can hold a hearing for this purpose that is not open to the public. The evidence presented cannot contain any history of the bargaining of the immediate dispute, nor any settlement offers made that were not part of the offer presented to the Impasse Neutral.¹¹⁷

¹¹⁰ See Final Bill 71-81, § 33-81.

¹¹¹ Ibid. § 33-81(a).

¹¹² Ibid.

¹¹³ Ibid. § 33-81(b)(1).

¹¹⁴ Ibid. § 33-81(b)(2).

¹¹⁵ Ibid. § 33-81(b)(3)-(7).

¹¹⁶ Ibid. § 33-81(b)(3).

¹¹⁷ Ibid. § 33-81(b)(4), (6).

- **Selection of “more reasonable” final offer.** On or before February 1st, the Impasse Neutral must select “the more reasonable” final offer submitted by the parties and must base the selection only on criteria established in the law.¹¹⁸
- **No changes to chosen final offer.** When choosing “the more reasonable” final offer, the Impasse Neutral must select the whole offer of a party and cannot make any changes to the offer.¹¹⁹
- **Final offer becomes agreement between the parties.** The final offer selected by the Impasse Neutral, plus all previously agreed-upon items identified by the parties, represent the final agreement between the parties. The parties are required to execute this agreement.¹²⁰

Table 5-8 identifies the exclusive set of factors on which the Impasse Neutral can base the selection of the “more reasonable” final offer.

Table 5-8. Factors on Which Impasse Neutral Must Base Selection of “Final Offer”

| Factors on Which the Impasse Neutral Can Base the Selection of a Final Offer |
|---|
| Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions. |
| Comparison of wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington metropolitan area and in Maryland. |
| Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel. |
| Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County. |
| The interest and welfare of the public. |
| The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer. |

Source: Final Bill 71-81, § 33-81(b)(5)(A)-(F).

Amendment to Impasse Procedures Recommended by the Fraternal Order of Police. In his written public hearing testimony, FOP attorney George Driesen submitted suggested amendments to Bill 71-81, including amendments to the section of the bill describing impasse procedures. The FOP’s amendments differed from the final version of Bill 71-81 in the following ways:

- A panel of three arbitrators, not one, would resolve impasses – one appointed by the Council, one appointed by the employee organization, and a third appointed by the first two arbitrators or chosen through a process of the Federal Mediation and Conciliation Service or the American Arbitration Association.
- The type of evidence that the parties could submit to the arbitrators was not limited in any way – parties could submit “any ... evidence and other data deemed relevant by the arbitration panel”

¹¹⁸ Ibid. § 33-81(b)(5).

¹¹⁹ Ibid. § 33-81(b)(5), (6).

¹²⁰ Ibid. § 33-81(b)(7).

- Each party would submit to the panel its “last and best offer” for each individual “issue in dispute,” not for a complete package of issues.
- An award would be binding on the Council, the County Executive, and the employee organization, not just on the County Executive and the employee organization.¹²¹

The Council did not incorporate this suggested language into the final bill.

Public Hearings. Regarding impasse procedures, comments at the public hearings focused primarily on the issue of binding arbitration. Special Counsel Robert Hillman explained that the County Executive interpreted the language in the Charter amendment to refer to interest arbitration, not grievance arbitration, which is why he included interest arbitration in the proposed bill.¹²²

Attorney George Driesen, speaking on behalf of the FOP, praised the County Executive for his courtesy and willingness to discuss issues with the FOP when drafting the bill. However, because the bill gave the Council the final authority to approve or reject certain provisions in any agreement, he characterized the bill as “inadequate, both as a matter of law in the county and as a matter of policy” because by not binding the Council as part of the arbitrator’s final decision, the bill did not allow for “final adjudication” of impasses.¹²³

Mr. Driesen stated that:

It is widely recognized that there must be a fair and equitable method of resolving once and for all disagreements over the contents of collective bargaining agreements when one of the bargaining parties represents the uniformed services. Otherwise uniformed employees may strike even though a strike is unlawful because they have no other means of obtaining a settlement that is perceived to be fair.... The FOP is opposed to strikes by police officers. The Fraternal Order of Police, the parent organization, expressly forbids strikes, and that rule binds Lodge 35.¹²⁴

Two individuals at the public hearing opposed binding arbitration as a part of collective bargaining. Tom Israel, a former Board of Education member, and Jim Goeden, representing the Bethesda-Chevy Chase Chamber of Commerce, predicted that any agreement reached through arbitration would become the minimum negotiating point for all other County employees.¹²⁵ On the other hand, John Fiscella, a private consultant on problems in public sector labor relations, spoke at the public hearing about a study by Dr. Arvid Anderson that found that public sector settlements based on binding arbitration were less costly than “those agreed to voluntarily in mutually agreed to contracts.”¹²⁶

March 3, 1982 Council Worksession. At the Council’s second worksession on the bill, Mr. Driesen stated that the bill does not have classic “interest” arbitration because the arbitrator’s decision only binds the County Executive in his recommendations to the Council – it does not bind the Council.¹²⁷

¹²¹ See Statement of George B. Driesen on Behalf of the Fraternal Order of Police, Montgomery County Lodge 35 Before the Montgomery County Council, January 14, 1982 at Exhibit I.

¹²² 1-25-82 Public Hearing Transcript at p. 15.

¹²³ Ibid. at p. 25.

¹²⁴ Ibid. at p. 27.

¹²⁵ Ibid. at p. 15-17.

¹²⁶ 1-14-82 Public Hearing Transcript at p. 32.

¹²⁷ 3-8-82 County Council Minutes at p. 5.

As enacted by the Council, the final version of Bill 71-81 required the parties to resolve impasses through mediation and binding arbitration.

D. Permanent Umpire

As adopted by the Council, the final version of Bill 71-81 also created a position of “Permanent Umpire” to implement and administer the sections of the law addressing selection and certification of employee organizations and prohibited practices. Like the section of the bill establishing the impasse procedure, few changes were made in this section of the bill from the first to the final draft.¹²⁸ This section of the report describes the language in the final draft of the bill.

The Permanent Umpire’s duties included:

- Creating regulations and procedures to implement and administer the sections of the law overseen by the Permanent Umpire;
- Requesting needed assistance, service, and data from the County Executive and an employee organization;
- Holding hearings;
- Holding and conducting elections for the certification or decertification of employee organizations;
- Investigating and resolving allegations of prohibited practices, deferring to negotiated grievance procedures or the Law Enforcement Officers Bill of Rights, where necessary;
- Obtaining support and expending funds allocated in the County budget as necessary; and
- Exercising other powers and performing other duties as specified in the law.¹²⁹

Under the law, the County Executive appointed and the Council confirmed a Permanent Umpire, who would serve a five-year term as a contract employee.¹³⁰ The law also required the Permanent Umpire to have experience as a labor relations “neutral” – with no ties to the interests of either the employer or employee organizations.¹³¹

Public Hearings. At the second public hearing, Special Counsel Robert Hillman testified that the Permanent Umpire was added to the law to ensure “free choice” by employees and “fair dealing.” Kathy Dolan, representing an organization called the Employee Organizations Task Force, commented that the Permanent Umpire “looks like a bargain basement version of a Public Employee Relations Board and has some real flaws.”¹³² Specifically, Ms. Dolan asserted, without elaboration, that certain provisions of the law would hamper information gathering by the Permanent Umpire.¹³³

¹²⁸ Compare Bill 71-81 Draft #1, § 33-77 with 4-6-82 County Council Legislative Minutes at p. 3875-3878.

¹²⁹ Final Bill 71-81, § 33-77(a).

¹³⁰ Ibid. § 33-77(b), (c).

¹³¹ Final Bill 71-81, § 33-77(b).

¹³² 1-25-82 Public Hearing Transcript at p. 22.

¹³³ Ibid.

February 4, 1982 Council Worksession. At the Council’s February 1982 worksession, the Council rejected a suggested amendment that would specify the manner in which the Permanent Umpire would conduct run-off elections.¹³⁴ Special Counsel Hillman suggested rejecting the language because the legislation was written to give the Permanent Umpire “full discretion regarding election procedures.”¹³⁵

E. Definition of “Employee”

As adopted by the Council, the final version of Bill 71-81 defined the class of employees with the right to collective bargaining representation as any police officer in a non-supervisory classification below the rank of Police Sergeant.¹³⁶ According to Special Counsel Robert Hillman, the County Executive defined the class this way because it mirrored the definition in the “Meet and Confer” law and because the County Executive strongly believed that sergeants were a part of police management.¹³⁷

F. Employee Rights

As adopted by the Council, Bill 71-81 established a set of employee rights with respect to the collective bargaining process.¹³⁸ It also outlined certain rights and/or duties of the employer and an employee organization. Table 5-9 summarizes the rights and duties outlined in the final version of the legislation.

Table 5-9. Summary of Rights and Duties in the Police Collective Bargaining Bill

| Employee Rights | Certified Representative Duties | Employer Duties |
|---|--|---|
| <ul style="list-style-type: none"> • To form, join, support, contribute to, or participate in an employee organization or its lawful activities. • To refrain from forming, joining, supporting, contributing to, or participating in an employee organization or its lawful activities. • To be fairly represented by a certified representative, if any. | <ul style="list-style-type: none"> • To serve as the bargaining agent for all employees. • To represent fairly and without discrimination all employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs (seeking to enforce a valid agency shop provision does not violate this duty). | <ul style="list-style-type: none"> • To extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties. |

Source: Final Bill 71-81, § 33-78(a)-(c).

G. Prohibited Practices

As adopted by the Council, the final version of Bill 71-81 outlined a list of “prohibited practices” for both the employer and an employee organization.¹³⁹ The law assigned the Permanent Umpire responsibility for investigating, holding hearings on, determining the validity of, ordering parties to stop, and crafting remedies for prohibited practices.¹⁴⁰

¹³⁴ 2-4-82 County Council Minutes at p. 9.

¹³⁵ Ibid.

¹³⁶ Final Bill 71-81, § 33-76.

¹³⁷ 1-25-82 Public Hearing Transcript at p. 7.

¹³⁸ Final Bill 71-81, § 33-78(a).

¹³⁹ Ibid. § 33-82(a), (b).

¹⁴⁰ Ibid. § 33-82(c), (d).

The law included the following examples of remedies to prohibited practices:

- Reinstating employees with or without back pay;
- Making employees whole for any losses resulting from a prohibited practice; and
- Withdrawing or suspending an employee organization's right to negotiate or continue membership dues deductions, or agency shop benefits.¹⁴¹

Table 5-10 summarizes the practices prohibited in the law.

Table 5-10. Summary of Prohibited Practices in Bill 71-81

| Employers are Prohibited From... | Employee Organizations and Employees Are Prohibited From... |
|--|--|
| <ul style="list-style-type: none"> • Interfering with, restraining or coercing employees in the exercise of any rights granted to them under the police collective bargaining law. • Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it (excluding membership dues deductions and reasonable use of County facilities to communicate with employees). • Encouraging or discouraging membership in any employee organization by discrimination in regards to hiring, tenure, wages, hours, or conditions of employment. • Discharging or discriminating against a public employee for filing charges, giving testimony, or otherwise lawfully aiding the administration of the police collective bargaining law. • Refusing to bargain collectively with a certified employee organization. • Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects. • Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement. • Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached between the employee and the certified employee organization under the police collective bargaining law. • Engaging in a lockout of employees. | <ul style="list-style-type: none"> • Interfering with, restraining or coercing the employer or employees in the exercise of any rights granted to them under the police collective bargaining law. • Restraining, coercing or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. • Refusing to bargain collectively with the employer if an employee organization is the certified representative. • Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects. • Hindering or preventing, by threats of violence, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or egress from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance by any person, public or private. • Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, supplies, equipment or services by the employer. • Taking or retaining unauthorized possession of property of the employer or refusing to do work or use certain goods or materials as lawfully required by the employer. • Forcing or requiring the employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification. • Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed or to be performed. |

Source: Final Bill 71-81, § 33-82(a), (b)

¹⁴¹ Ibid. § 33-82(d).

At the second public hearing on the bill and at the Council's March 1982 worksession, FOP attorney George Driesen raised a strong objection to including some of the prohibited practices in the law because they are "criminal violations. They have no place in a labor relations ordinance"¹⁴² The Council did not amend the bill to address Mr. Driesen's concerns.

H. Prohibition on Strikes and Lockouts

The Charter amendment required the collective bargaining law to prohibit strikes or work stoppages by police officers.¹⁴³ Accordingly, as adopted by the Council, Bill 71-81 prohibited employees and employee organizations from striking and prohibited the County from locking out employees.¹⁴⁴

The legislation prohibited the County Executive from paying any employee for a period that the employee was engaged in a strike.¹⁴⁵ The final bill also gave the Permanent Umpire authority to investigate and hold hearings on alleged violations of this portion of the law.¹⁴⁶ If the Permanent Umpire found that a violation occurred, the County Executive could:

- Impose disciplinary action, including dismissal from employment, on employees engaged in prohibited conduct;
- Terminate or suspend an employee organization's dues deduction privilege; and
- Revoke the certification of an employee organization and disqualify it from elections for up to two years.¹⁴⁷

Public Hearings. FOP attorney George Driesen testified that the FOP opposed the provision in law prohibiting paying an employee for the time the employee was engaged in a strike.¹⁴⁸ Mr. Driesen argued that even though the FOP did not condone strikes, the provision would tie the hands of a future County Executive who might find a reason to pay employees who engaged in a strike.¹⁴⁹ The Council retained the provision in the bill prohibiting the County Executive from paying any employee for a period that the employee was engaged in a strike

I. Election of a Certified Representative

As adopted by the Council, Bill 71-81 established an election process for certifying or decertifying an employee organization as the police officers' collective bargaining representative.¹⁵⁰ However, the bill allowed an organization certified as the police officers' representative under the "Meet and Confer" law to become certified under the collective bargaining law without an election if that organization filed a valid petition for certification within a certain timeframe after the bill became law and if no other employee organization filed a valid petition for certification.¹⁵¹ Except for this exception, Bill 71-81 prohibited "voluntary recognition" of an employee organization.¹⁵²

¹⁴² 1-25-82 Public Hearing Transcript at 32, 34; 3-8-82 County Council Minutes at p. 11.

¹⁴³ Charter of Montgomery County, Maryland, § 510, adopted November 4, 1980.

¹⁴⁴ Final Bill 71-81, § 33-84(a).

¹⁴⁵ Ibid. § 33-84(b).

¹⁴⁶ Ibid. § 33-84(c).

¹⁴⁷ Ibid.

¹⁴⁸ 1-25-82 Public Hearing Transcript at p. 33.

¹⁴⁹ Ibid.

¹⁵⁰ See Final Bill 71-81, § 33-79.

¹⁵¹ Ibid. § 33-79(a)(6).

¹⁵² Ibid. § 33-79(e).

The law required an employee organization to receive a majority of votes cast in an election for certification to win the election.¹⁵³ Under the law, the Permanent Umpire received petitions for certification and decertification of employee organizations and supervised elections.¹⁵⁴

J. Agency Shop Provisions

As adopted by the Council, Bill 71-81 prohibited a collective bargaining agreement from requiring membership in, participation in, or contributions to an employee organization by employees, except for an “agency shop” provision.¹⁵⁵ An “agency shop” provision, as defined in the law, refers to a provision in a collective bargaining agreement:

[R]equiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all its members. Any agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.¹⁵⁶

At the first public hearing on the bill, Montgomery County Education Association President David Eberly expressed his support for agency shop agreements.¹⁵⁷

K. Employee Representation in Grievances

The first drafts of Bill 71-81 required the County Government to give an employee organization the exclusive right to represent employees in grievances.¹⁵⁸ In the Council’s February 1982 worksession, Council Legislative Counsel David Frankel recommended removing this language, reasoning that an employee might want representation in a grievance by private counsel.¹⁵⁹

Special Counsel Robert Hillman objected to the suggestion, reasoning that allowing private counsel to handle grievances under the contract “could weaken the process.”¹⁶⁰ The FOP’s attorney, Mr. Driesen agreed with Mr. Hillman.¹⁶¹

The Council did not change the language in the bill. The final bill, as adopted by the Council, gave an employee organization the exclusive right to represent employees in grievances.¹⁶²

L. Payment of Election Costs

As adopted by the Council, Bill 71-81 required the County to pay for the cost of conducting elections of employee organizations.¹⁶³ At the Council’s second worksession on the bill, someone (unidentified) suggested changing the bill’s language to indicate the cost would be “borne 50 percent by the County and 50 percent by the employee organizations.”¹⁶⁴ The Council did not make this change.¹⁶⁵

¹⁵³ Ibid. § 33-79(b)(6).

¹⁵⁴ Ibid. § 33-79(a)(1)-(2), (b).

¹⁵⁵ Ibid. § 33-78(d).

¹⁵⁶ Ibid. § 33-76.

¹⁵⁷ 1-14-82 Public Hearing Transcript at p. 6-7.

¹⁵⁸ Bill 71-81 Draft #1, § 33-78(b); Bill 71-81 Draft #2, § 33-78(b).

¹⁵⁹ 2-4-82 County Council Minutes at p. 7.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.; see also Final Bill 71-81, § 33-78(b).

¹⁶³ Final Bill 71-81, § 33-79(d).

¹⁶⁴ 3-8-82 County Council Minutes at p. 12.

¹⁶⁵ Ibid.

CHAPTER VI. Establishing Collective Bargaining for County Government Employees

Bill 19-86, enacted on June 24, 1986, established a collective bargaining system for Montgomery County Government employees – not including police officers and firefighters. Bill 26-99, enacted on March 7, 2000, changed the impasse resolution process established in Bill 19-86 – a mediator/fact-finder process – to a process of binding arbitration.

This Chapter summarizes the history of these laws and is organized as follows:

- **Section I, History of and Legislative Issues in Bill 19-86**, summarizes the legislative history of the Bill 19-86, including a description of the adoption of Montgomery County Charter § 511, and describes the primary issues addressed during the legislative process leading up to approval of Bill 19-86; and
- **Section II, History of and Legislative Issues in Bill 26-99**, provides a similar description of the legislative history of and primary issues addressed in Bill 26-99.

I. HISTORY OF AND LEGISLATIVE ISSUES IN BILL 19-86

The table below provides key dates related to Bill 19-86.

Table 6-1. Key Dates for Bill 19-86

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|-----------------------|---|--------------------------|----------------------------|--------------------|
| March 25, 1986 | April 22, 1986 | May 29, 1986 June 5, 1986 June 19, 1986 | June 24, 1986 | June 30, 1986 | Sept. 29, 1986 |
| Bill Sponsored By: | | Personnel Committee | | | |

On June 24, 1986, the Council unanimously approved (7-0) the final version of Bill 19-86, which allowed an employee organization elected by County Government employees to bargain with the County Government over wages, hours, and other terms and conditions of employment. The Councilmembers at the time were Rose Crenca, Scott Fosler, Esther Gelman, William Hanna, Michael Gudis, Neal Potter, and David Scull.¹

¹ See 6-24-86 County Council Legislative Minutes at 5952; Final Bill 19-86.

As enacted by the Council, Bill 19-86:

- Allowed a certified employee organization the exclusive right to bargain on behalf of employees for issues such as: salaries and wages, pension and retirement benefits, hours and working conditions, and the amelioration of the effect on employees when the County Government's exercise of "employer rights" causes a loss of existing jobs;
- Allowed an employee organization to bargain for an agency shop provision – which would require an employee to pay union dues or an equivalent fee to a union or, in the alternative, to a non-union, nonreligious charity;
- Allowed a neutral individual (called a "mediator/fact-finder") to help resolve impasses through a mediation/fact-finding process with an employee organization and the County Government; and
- Allowed the Council to approve or disapprove provisions of a collective bargaining agreement that required appropriation of funds; the enactment, repeal, or modification of County law; or which had or could have a present or future fiscal impact.

A. Legislative History of Bill 19-86

1. Adoption of Montgomery County Charter § 511

In the November 1984 general election, Montgomery County voters approved a ballot question to add a new § 511 to the County Charter allowing the Council to enact legislation providing collective bargaining rights for County Government employees not covered by Charter § 510 (collective bargaining for police officers).²

The County Council proposed the ballot provision, entitled *Collective Bargaining – County Employees*, which stated:

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the County government not covered by section 510 of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees.³

The ballot language, as approved by the voters, differed from Charter § 510 in two significant ways. First, the language in Charter § 511 stated that the Council "may provide by law for collective bargaining," whereas Charter § 510 stated that the Council "shall provide by law for collective bargaining." In other words, Charter § 510 requires the Council to provide collective bargaining legislation for police officers, where Charter § 511 gives the Council discretion whether to enact collective bargaining legislation for other County Government employees.⁴

² See 5-29-86 Memorandum from Charles Gilchrist, County Executive, to William Hanna, Council President at p. 1 [hereinafter "5-29-86 Gilchrist Memo"]; County Council Resolution 10-894.

³ County Council Resolution 10-894.

⁴ See *Minority Views on Charter Review Commission Recommendation B: A New Section 511 re Collective Bargaining for County Employees*. In this March 1984 report, several members of the Charter Review Commission (CRC) disagreed with the CRC's decision to recommend Charter § 511 with discretionary, rather than mandatory, language.

Second, the language in Charter § 511 gave the Council discretion in the type of impasse procedure to include in the law, authorizing “arbitration or other impasse resolution procedures.” Charter § 510 authorized only “binding arbitration.” In the Council’s July 26, 1984 worksession where it approved the ballot language, MCGEO President Gino Renne indicated that MCGEO preferred binding arbitration because “without it there will be inconsistency and uncertainty about how an impasse will be resolved.”⁵

Before the Council approved the above ballot language, several Councilmembers suggested amendments to the ballot language that did not pass.⁶ Councilmember Hanna moved to amend the above ballot language to allow for collective bargaining with “mediation or non-binding arbitration” instead of “arbitration or other impasse resolution procedures.”⁷

In response to the motion, Council President Gelman recommended including broad language in the ballot measure.⁸ Elizabeth Spencer, a member of the Charter Review Commission, indicated that changing the language to allow only non-binding impasse procedures would conflict with the language in Charter section 510.⁹

Councilmember Potter believed that binding arbitration would remove some of the Council’s authority to make final decisions.¹⁰ Councilmember Hanna echoed Councilmember Potter’s concern, objecting to “relinquishing” Council authority to an arbitrator.¹¹ However, Councilmember Hanna’s motion failed, with Councilmembers Hanna and Scull voting for the motion and Councilmembers Gudis, Potter, Crenca, Fosler, and Gelman voting against the motion.¹²

Councilmember Potter also made a motion to amend the ballot language to indicate that a collective bargaining law “may” prohibit strikes or work stoppages, instead of “shall” prohibit. The motion was not seconded. The Council subsequently approved the language for the ballot.

2. Collective Bargaining Legislation

In March 1986, approximately 16 months after County voters approved Charter § 511, the Council introduced Bill 19-86 to implement the new Charter provision. The Council’s Personnel Committee developed the first draft of Bill 19-86. The Committee also drafted alternative language - in the form of amendments to the bill - to give the Council choices on those issues and the opportunity for public debate.¹³

⁵ 7-26-84 County Council Minutes at p. 7. In 1983, shortly after being elected MCGEO President, Mr. Renne sent a memo to the Charter Review Commission advocating for collective bargaining with binding arbitration for County employees. See 10-27-83 Memorandum from Gino Renne, MCGEO President, to Montgomery County Charter Review Commission.

⁶ 7-26-84 County Council Minutes at p. 7-8.

⁷ Ibid. at p. 7.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ 3-25-86 Memorandum from Frances Moran, Office of Legislative Counsel Staff Attorney, to County Council.

The Council held a public hearing on Bill 19-86 in April 1986. The Council then held three worksessions on the bill – on May 29, June 5, and June 19, 1986. Councilmember Gelman explained during the public hearing that any provision in the bill did not necessarily represent the Personnel Committee’s position on an issue, but was one possible way to address the issue.¹⁴

Note: The official bill file for Bill 19-86 from the Council’s Legislative Information Services Office contained two drafts of the bill – the first and the final drafts. These two drafts are labeled “Staff – 3/17/86” and “4 – 6/24/86.” This chapter refers to the 3-17-86 draft as the “first draft” of the bill and refers to the 6-24-86 draft of the bill as the “final draft” or “final version” of the bill.

County Executive’s Position. County Executive Charles Gilchrist expressed general support for establishing a collective bargaining law in a May 29, 1986 memo to Council President Hanna.¹⁵ His memo detailed his support or opposition for specific provisions in the bill and for the Personnel Committee’s amendments submitted with the bill.¹⁶

At the public hearing on the bill, County Personnel Director William Garrett testified that “the Executive Branch is supportive of the legislation as proposed and pledges its full support in upcoming Council work sessions to obtain legislation that is equitable to all parties and that will foster a harmonious relationship between the County Government and its employees.”¹⁷

By the time of the first Council worksession on the bill, Sean Rogers, representing the County Executive, reported that based on discussions with MCGEO representatives, MCGEO’s positions and the County Executive’s positions “on the major issues [in the bill] are substantially similar.”¹⁸ Personnel Director Garrett estimated for the Council that the Bill 19-86 would give approximately 3,570 County Government employees collective bargaining rights – 1,270 employees in a services, labor and trades (SLT) bargaining unit and to 2,300 employees in an office, professional and technical (OPT) bargaining unit.¹⁹

Public and Employees Support and Opposition to the Bill. At the public hearing, every speaker except one supported establishing collective bargaining rights for County Government employees. The table (on the next page) lists some of the people who spoke in favor of collective bargaining, along with their affiliation.

¹⁴ 4-22-86 Public Hearing Transcript at p. 24.

¹⁵ 5-29-86 Gilchrist Memo at p. 1.

¹⁶ Ibid. at p. 1-9.

¹⁷ 4-22-86 Public Hearing Transcript at p. 12.

¹⁸ 5-29-86 County Council Minutes at p. 1.

¹⁹ 4-22-86 Public Hearing Transcript at p. 7. MCGEO President Gino Renne estimated for the Council that under the “Meet and Confer” law, between 65 and 70 percent of employees in the SLT unit and between 43 and 50 percent of employees in the OPT unit were members of MCGEO. Ibid. at p. 26.

Table 6-2. Partial List of Public Hearing Participants Who Supported Establishing Collective Bargaining Rights for County Government Employees

| Individual | Affiliation |
|------------------------------------|--|
| Earl Casey, Executive Director | Food and Allied Service Trades, Washington Metropolitan Council |
| Vincent Foo, President | MCCSSE Local 500 of the Service Employees International Union, AFL-CIO |
| Ernie Greco, Representative | Maryland State/D.C. AFL-CIO |
| Fred Keeney, President | Fraternal Order of Police, Maryland National Capital Park Police Lodge 30 |
| Mark Simon, President | Montgomery County Education Association |
| William Thompson, Esq. | Attorney representing MCGEO-UFCW Local 400 |
| Joslyn Williams, Second Vice Pres. | MD State/D.C. AFL-CIO (and Pres. of the Metro. Wash. Council AFL-CIO ²⁰) |
| Maria Coleman, President | Latin American Council for Advancement |
| Mark Simon, Representative | Washington Building and Construction Trades Council |
| Sarita Kubli, President | Montgomery County Department of Public Libraries Staff Association |
| Irv Riskind, Representative | Grey Panthers |
| Darlene Taper, Chairperson | Staff Nurse Council |
| Maureen Walter, Representative | Police Service Aides Association |
| Mauricio Cortina, Psychiatrist | Montgomery County Health Department |
| Heidi Hsia, Psychologist | Montgomery County Health Department |
| Lulu Richardson, Employee | Montgomery County Health Department |
| Diana Tash, Health Room Technician | Montgomery County Health Department |
| Donald Shaw, Employee | Montgomery County Department of Transportation |
| Roger Wolfe, Employee | Montgomery County |
| Dr. Robert Allnutt | Individual |
| Keith Prouty | Individual |
| Dave Robbins | Individual |

Source: 4-2-86 Public Hearing Transcript

MC GEO²¹ attorney William Thompson, testified in favor of collective bargaining rights for County Government employees. In his testimony, Mr. Thompson also voiced some concerns about Bill 19-86, stating that “[t]he proposed bill ... includes a number of provisions and optional provisions which seriously undermine the overall effectiveness of the legislation, should these provisions be included in the statute as passed by the full Council.”²²

²⁰ Ibid. at p. 61.

²¹ At this time, MCGEO was affiliated with the United Food and Commercial Workers International Union (UFCW) and was known as MCGEO-UFCW Local 400. See Ibid. at p. 14.

²² Ibid. at p. 15.

Citing poor working conditions in libraries, safety concerns, and gender-based wage discrimination in County Government, Sarita Kubli, President of the Montgomery County Department of Public Libraries Staff Association, testified that “[w]e’ve exhausted other routes, and we are counting on collective bargaining to hasten pay equity implementation and improved working conditions for all County employees.”²³ Similarly, Darlene Taper, Chairperson of the Staff Nurse Council, testified that “the Community Health Nurses of Montgomery County have found the policy of Meet and Confer to be unsatisfactory.”²⁴

Harold Wirth, representing the Montgomery County Taxpayers League, was the only person at the public hearing to testify in opposition to Bill 19-86. Mr. Wirth testified that “union control of government inevitably leads to higher costs of government, our responsibility to the taxpayers of our County dictates that we impress upon you the unfairness of approving any act leading to higher costs and therefore taxes.”²⁵ He asserted that “[Bill 19-86] takes [Councilmember’s] elective power right out of your hands and places this power in the hands of union bosses who will control our government.”²⁶

Many individuals also wrote letters supporting or opposing the bill.²⁷ Among those weighing in favor of collective bargaining rights for County Government employees were Gail Ewing²⁸ (elected in 1990 to the Council) and Maryland State Senator Stewart Bainum.²⁹

B. Major Legislative Issues in Bill 19-86

The final version of Bill 19-86 addressed numerous issues, including:

- Employees Represented in the Law;
- Subjects for Bargaining;
- Employer Rights;
- Collective Bargaining Process;
- Election of a Certified Representative;
- Bargaining Units;
- Labor Relations Administrator;
- Employee Rights;
- Preemption of Laws and Regulations;
- Cost-of-Living Adjustment;
- Prohibition on Strikes and Lockouts; and
- Prohibited Practices.

²³ Ibid. at p. 34.

²⁴ Ibid. at p. 45.

²⁵ Ibid. at p. 88. Mr. Wirth was joined at the public hearing by Richard Mancuso, the Chairman of the Board of the Montgomery County Taxpayers League.

²⁶ Ibid. at p. 91.

²⁷ See these letters in the appendix to this report online at www.montgomerycountymd.gov/olo.

²⁸ See 4-22-86 Written Testimony on Collective Bargaining Bill 19-86, by Gail Ewing.

²⁹ See 4-22-86 Written Testimony on MC 19-86, by Senator Stewart Bainum, Jr.

This section summarizes these issues.

1. Employees Represented in the Law

Similar to Bill 11-76 (the “Meet and Confer” law), the final version of Bill 19-86 defined an “employee” eligible for collective bargaining rights under the law as “any person who works under the County government merit system on a continuous full-time, career or part-time, career basis.” The final version of Bill 19-86, as adopted by the Council in 1986, excluded 19 groups of employees from representation.³⁰ Table 6-3 lists the specific groups excluded from representation.

**Table 6-3. Summary of Employees Excluded from Representation
Under the County Government Collective Bargaining Law**

| Groups of Employees Excluded from Representation Under the County Government Collective Bargaining Law |
|--|
| <ul style="list-style-type: none">• Confidential aides to elected officials;• All persons not in the merit system;• Heads of principal departments, offices, and agencies;• Deputies and assistants to heads of principal departments, offices, and agencies;• Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency;• Persons reporting directly to or whose immediate supervisor is the County Executive or the CAO or their principal aides;• Persons who work for the office of the County Executive and the office of the CAO;• Persons who work for the County Council;• Persons who work for the Office of the County Attorney;• Persons who work for the Office of Management and Budget;• Persons who work for the Personnel Office;• Persons who work for the Merit System Protection Board;• Persons who work on a temporary, seasonal, or substitute basis;• Newly hired persons on probationary status;• Persons who work for the police department who are represented by a certified employee organization under the police collective bargaining law;• Officers in the uniformed services (corrections, fire and rescue, police, office of the sheriff) in the rank of sergeant and above (subject to any limitations in State law, deputy sheriffs below the rank of sergeant are employees);• Persons who are members of the State merit system;• Supervisors; and• Persons in grade 27 or above, whether or not they are supervisors. |

Source: Final Bill 19-86, § 33-102(4).

³⁰ Final Bill 19-86, § 33-102(4).

The final bill defined a “supervisor” as any person with the authority to do any of the following:

- Hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively to recommend any one of these actions;
- Direct the activity of three or more employees; or
- Adjust or recommend adjustment of grievances.³¹

As originally drafted, Bill 19-86 amended the “Meet and Confer” law so that it would not apply to any employees after they became represented for collective bargaining purposes:

Upon certification that the employees in the units are represented for collective bargaining, this article shall not apply to any person.³²

At the time Bill 19-86 was being considered, there was a group of employees who held merit jobs classified as hybrid State/County positions; many of these jobs were located in the County’s Department of Social Services. A Personnel Committee amendment submitted with the bill would have allowed these State/County merit system employees to remain covered by the “Meet and Confer” law.³³ County Executive Gilchrist opposed this amendment.³⁴

In his May 29, 1986 memo, County Executive Gilchrist explained his reasons for excluding State/County merit system employees and employees in grades 27 and above from the collective bargaining legislation. Mr. Gilchrist argued that State/County “employees’ conditions of employment are substantially determined by the State. To include them within the ambit of this Bill, for the small portion of their working conditions set by the County, creates an unnecessarily cumbersome system and a significant burden on the management of County government.”³⁵ Mr. Gilchrist also explained that the law would exclude 22 employees in grades 27 and above – five architects, fourteen physicians, and three dentists – who were “top-level professional staff who occupy positions with special relationships and special circumstances to the County government due to their professional standing.”³⁶

Much of the testimony at the April 1986 public hearing on Bill 19-86 focused on defining which employees would be eligible for representation and which would be excluded. Many speakers advocated defining “employee” to include State/County merit system employees as well as employees in grade 27 and above.³⁷

³¹ Ibid. § 33-102(4).

³² Bill 19-86 Staff Draft, § 33-63A.

³³ See 5-27-86 Memorandum from Arthur Spengler, Council Staff Director, to County Council at ©47 [hereinafter “5-27-86 Spengler Memo”].

³⁴ 5-29-86 Gilchrist Memo at p. 9.

³⁵ Ibid. at p. 2.

³⁶ Ibid. at p. 2.

³⁷ See testimony of MCGEO attorney William Thompson (4-22-86 Public Hearing Transcript at 17); Dr. Robert Allnutt (Ibid. at p. 29-30); Montgomery County Education Association President Mark Simon (Ibid. at p. 66); Montgomery County Psychiatrist Mauricio Cortina (Ibid. at p. 81); and Montgomery County Health Department Psychologist Heidi Hsia (Ibid. at p. 83-84).

A number of individuals at the public hearing specifically opposed excluding physicians from collective bargaining.³⁸ Still others urged the Council to allow individuals excluded from collective bargaining to retain “meet and confer” rights.³⁹ Vincent Foo, President of MCCSSE Local 500 of the Service Employees International Union, AFL-CIO (representing MCPS employees), recommended allowing collective bargaining rights for all County Government employees, asserting that “this Council has no right to exclude any employee from this group.”⁴⁰

Employees in the Montgomery County Department of Social Services sent the Council a petition with 126 signatures urging Councilmembers to give State/County merit system employees collective bargaining rights.⁴¹ The Council also received at least 62 letters from Department of Social Services employees advocating the same position.⁴² The Council received a separate petition signed by 27 employees opposing the exclusion of employees in grades 27 and above from the collective bargaining legislation.⁴³

At its May 1986 worksession, the Council agreed to amend Bill 19-86 to retain the “meet and confer” process for State/County employees, but not for employees at grade 27 and above.⁴⁴ The Council “noted that, should some reason become apparent in the future for the ‘meet and confer’ benefit for employees at Grade 27 and above, the law could be amended to provide this benefit.”⁴⁵ The Council did not amend the definition of “employee” between the first and final drafts of the bill.⁴⁶

2. Subjects for Bargaining

The first draft of Bill 19-86 identified the following seven topics over which a certified employee organization and the County Executive had a duty to bargain collectively:⁴⁷

1. Salary and wages, including the increase and/or decrease in the salary and wages budget, and the percentage of any increase in the salary and wages budget that will be devoted to merit increments and cash awards, provided that salaries and wages shall be uniform for all employees in the same classification;
2. With respect to pension and retirement benefits, only defined-contribution plans for new employees or current employees who choose to transfer from a defined-benefit plan, provided that bargaining rights regarding such plans will not accrue unless and until the County has enacted a law establishing such a plan;

³⁸ See testimony of Dr. Robert Allnutt (4-22-86 Public Hearing Transcript at p. 30); Ron Phillips, National Representative for the Union of American Physicians and Dentists (Ibid. at p. 37); Rochelle Herman, County Government psychiatrist (Ibid. at p. 38).

³⁹ See testimony of MCGEO attorney William Thompson (4-22-86 Public Hearing Transcript at p. 22); Earl Casey, Executive Director of the Food and Allied Service Trades, Washington Metropolitan Council (Ibid. at p. 74); and Fred Keeney, President, Fraternal Order of Police, Maryland National Capital Park Police Lodge 30 (Ibid. at p. 96).

⁴⁰ 4-22-86 Public Hearing Transcript at p. 60.

⁴¹ See Petition from Montgomery County Department of Social Services Employees.

⁴² See these letters in the appendix to this report online at www.montgomerycountymd.gov/olo.

⁴³ See this petition in the appendix to this report online at www.montgomerycountymd.gov/olo.

⁴⁴ 5-29-86 County Council Minutes at p. 2. See also Final Bill 19-86, §§ 33-62 to 33-72 (amending the “meet and confer” law to apply only to certain State/County merit system employees).

⁴⁵ 5-29-86 County Council Minutes at p. 2.

⁴⁶ Compare Bill 19-86 Staff Draft, § 33-102(4) with Final Bill 19-86, § 33-102(4).

⁴⁷ Bill 19-86 Staff Draft, § 33-107(a).

3. Employee benefits such as insurance, leave, holidays, and vacations, but not including pension and retirement benefits except to the extent stated [above];
4. Hours and working conditions;
5. Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:
 - Binding third party arbitration, provided that the arbitrator shall have no authority to amend, add to, or subtract from the provisions of the collective bargaining agreement; and
 - Provisions for exclusivity of forum;
6. Matters affecting the health and safety of employees; and
7. Amelioration of the effect on employees when the exercise of employer rights ... causes a loss of existing jobs in the unit.⁴⁸

The Personnel Committee also submitted three amendments to Bill 19-86 that addressed topics for collective bargaining:

- The first amendment prohibited collective bargaining over pension and retirement benefits;
- The second amendment allowed bargaining over any “effect on employees of the employer’s exercise of [employer] rights;” and
- The third amendment allowed binding grievance arbitration only in discharge and discipline cases.⁴⁹

Public hearing testimony and Councilmember discussions focused primarily on two of these topics: the right to bargain over pension and retirement benefits; and the right to bargain over the amelioration of the effect on employees when the exercise of employer rights causes a loss of jobs. The final version of Bill 19-86, as enacted by the Council, amended the language in Bill 19-86 addressing pension and retirement benefits, but did not amend the language from the first draft with respect to “effects bargaining” and binding grievance arbitration.

Collective Bargaining over Pension and Retirement Benefits. The first draft of Bill 19-86 allowed the County Executive and an employee organization to bargain over a defined-contribution retirement plan (as opposed to a defined-benefit plan). At the time the Council was considering Bill 19-86, however, the County Government did not have a defined-contribution retirement plan for employees.

⁴⁸ Ibid. § 33-107(a).

⁴⁹ See 5-27-86 Memorandum from Arthur Spengler, Council Staff Director, to County Council at ©41-43 [hereinafter “5-27-86 Spengler Memo”]. MCGEO opposed the amendment limiting the scope of binding arbitration for grievances. MCGEO attorney William Thompson testified that “[t]he option appended to the bill which would limit binding arbitration only to disciplinary matters would take away from the employees the primary method of enforcing contractual promises in collective bargaining.” 4-22-86 Public Hearing Transcript at p. 20.

At the public hearing on Bill 19-86, Personnel Director William Garrett testified that County Executive Gilchrist recommended that employees be able to bargain over all retirement benefits, not just a defined-contribution plan.⁵⁰ Consistent with this position, County Executive Gilchrist opposed the amendment to Bill 19-86 that would have prohibited bargaining over all pension or retirement benefits.⁵¹

MCCEO attorney William Thompson testified at the public hearing that MCCEO strongly supported the County Executive's recommendation to allow bargaining over all retirement benefits.⁵² Several other union representatives at the public hearing echoed Mr. Thompson's position.⁵³ Montgomery County Education Association President Mark Simon testified that "[t]o limit the type of plans about which the County must bargain to plans which don't exist is thoroughly inequitable and guts much of the impact of the ability to bargain over basic conditions of employment"⁵⁴

At the May 29, 1986 Council worksession, the County Executive's representative reiterated the Executive's support for collective bargaining over all pension plans.⁵⁵ In response, William Willcox, special attorney to the Council, warned the Council that collective bargaining over pension plans could be problematic because of the complicated nature of pension plans and the limited time for considering the consequences of decisions during the collective bargaining process.⁵⁶

At the worksession, Councilmember Potter made a motion to include all pension plans as a subject for collective bargaining.⁵⁷ Councilmember Gelman suggested (and Councilmember Potter agreed to) amending the motion to make defined-benefit plans a subject of collective bargaining if the Council did not adopt a defined-contribution plan within one year of the effective date of Bill 19-86.⁵⁸

The Council minutes indicated that Councilmember Potter "restated" his motion "using the following language suggested by MCCEO attorney William Thompson: For one year from the effective date of the law, pensions will not be open to collective bargaining."⁵⁹ The Council passed the motion.⁶⁰

⁵⁰ 4-22-86 Public Hearing Transcript at p. 9.

⁵¹ 5-29-86 Gilchrist Memo at p. 6.

⁵² 4-22-86 Public Hearing Transcript at p. 19.

⁵³ See testimony of Vincent Foo, President of MCCSSE Local 500 of the Service Employees International Union, AFL-CIO (4-22-86 Public Hearing Transcript at 60); Mark Simon, President of the Montgomery County Education Association (Ibid. at p. 67); and Fred Keeney, President, Fraternal Order of Police, Maryland National Capital Park Police Lodge 30 (Ibid. at p. 96).

⁵⁴ 4-22-86 Public Hearing Transcript at p. 67.

⁵⁵ 5-29-86 County Council Minutes at p. 4. The Council Minutes did not identify the representative by name.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

Based on the description in the Council minutes, the meaning of Mr. Thompson's language (to open pensions for collective bargaining after one year from the effective date of the law) differed from the meaning of Councilmember Potter's motion with Councilmember Gelman's suggested amendment (to make the defined-benefit plan a subject of collective bargaining if the Council did not adopt a defined-contribution plan within one year of the effective date of the law).

On June 13, 1986, Sean Rogers, the County's Chief for Labor/Employee Relations and Training, sent a memo to Council President Hanna indicating that the County Executive, MCGEO, and Council staff disagreed over the Council's intent with respect to pension and retirement benefits based on the Council's discussions in its May 1986 worksession.⁶¹ Mr. Rogers characterized the May 1986 worksession as follows:

The Executive proposed an amendment to the bill in this section [regarding pensions] at the May twenty-ninth work session to broaden negotiations in this area. The Council was not opposed to the amendment, but sought a one year delay in negotiations to allow the legislative body the opportunity to revise existing pension and retirement systems. The Executive sought, in his amendment to the section, to permit both pension benefits described by law and other retirement benefits to be immediately and fully negotiable. As a compromise and to accommodate the Council, the Executive and MCGEO/Local 400 proposed a one year delay in the negotiability of pension and retirement benefits. This position was adopted by the Council with little discussion or debate.⁶²

In his memo, Mr. Rogers proposed the following language for the bill to clarify the County Executive's position on bargaining over pension and retirement benefits:

With respect to pension and retirement benefits, pension benefits derived from County law and additional retirement benefits, including but not limited to those not specifically derived from law, shall be negotiable one year after the effective date of the statute.⁶³

A memorandum from Arthur Spengler, Council Staff Director, recaps the Council's May 1986 worksession debate as being "confined to pension benefits (i.e., defined benefit versus defined contribution plans); we do not recall any discussion regarding other retiree benefits (e.g., medical and dental benefits; cost sharing)."⁶⁴ Mr. Spengler's memo suggested the following language for the bill:

With respect to pension and retirement benefits, pension benefits only shall be negotiable, for active employees only, one year after the effective date of this statute.⁶⁵

At the Council's June 19, 1986 worksession, the Council voted to make "other retirement benefits" bargainable and to make pension and retirement benefits bargainable for active employee only.⁶⁶ Table 6-4 (on the next page) compares the language describing bargainable pension and retirement benefits between the first draft and the final version of the bill.

⁶¹ 6-13-86 Memorandum from Sean Rogers, Chief, Labor/Employee Relations and Training, to Council President Hanna at p. 1 [hereinafter "6-13-86 Rogers Memo"].

⁶² 6-13-86 Rogers Memo at p. 1-2.

⁶³ *Ibid.* at p. 2.

⁶⁴ 6-17-86 Memorandum from Arthur Spengler, Council Staff Director, to County Council at p. 1.

⁶⁵ *Ibid.* at p. 2.

⁶⁶ 6-19-86 County Council Minutes at p. 4.

Table 6-4. Comparison of Bill 19-86's Language Defining Scope of Collective Bargaining over Pension and Retirement Benefits

| First Draft | Final Bill |
|--|--|
| With respect to pension and retirement benefits, only defined-contribution plans for new employees or current employees who choose to transfer from a defined-benefit plan, provided that bargaining rights regarding such plans will not accrue unless and until the County has enacted a law establishing such a plan. | Pension and other retirement benefits shall be negotiable, for active employees only, one year after the effective date of this article. |
| Employee benefits such as insurance, leave, holidays, and vacations, but not including pension and retirement benefits except to the extent stated in subsection (a)(2). | Employee benefits such as insurance, leave, holidays, and vacations. |

Source: Bill 19-86 Staff Draft, § 33-107(a)(2), (3); Final Bill 19-86, § 33-107(a)(2), (3)

Bargaining over the Effect on Employees of the Exercise of Employer Rights. The first draft of Bill 19-86 allowed the parties to bargain over “the amelioration of the effect on employees when the exercise of employer rights ... causes a loss of existing jobs in the unit.”⁶⁷ A Personnel Committee amendment to Bill 19-86 proposed expanded language that would have allowed bargaining over “the effect on employees of the employer’s exercise of the rights enumerated in subsection (b) hereof.”⁶⁸ The language in the amendment mirrored the “effects bargaining” language adopted in the police collective bargaining law.⁶⁹

At the public hearing on the bill, Personnel Director William Garrett testified that the Executive Branch opposed the amendment to the bill:

The Executive Branch is opposed to any expansion of the meaning of effects bargaining under Section 107(a)(7). Without careful delineation of the subject matter in this area, negotiating the effects on employees of management actions can undermine the employer’s ability to function. As an example, management must be in a position to transfer employees based on organizational need, typically, to improve the effectiveness of operations and delivery of services. Under the suggested amendment, management could be precluded from transferring bargaining unit employees until the economic impact of the transfer on employees was negotiated.⁷⁰

MCGEO attorney William Thompson, however, strongly objected to the limitation proposed on the “effects bargaining” provision in the bill and recommended using the same language in the police collective bargaining law. Mr. Thompson argued that:

Such a provision does not in any way limit management’s right to make the management decisions.... Often management decisions such as the movement of workplace from one area of the County to another cause serious effects on employees. We believe that such effects as transportation problems of affected employees must be bargained. The bill would not permit such effects bargain[ing].⁷¹

⁶⁷ Bill 19-86 Staff Draft, § 33-107(a)(7).

⁶⁸ 5-27-86 Spengler Memo at ©43.

⁶⁹ See Final Bill 71-81, § 33-80(a)(7).

⁷⁰ 4-22-86 Public Hearing Transcript at p. 10.

⁷¹ 4-22-86 Public Hearing Transcript at p. 20-21.

County Executive Gilchrist informed the Council in writing and at the Council's June 5th worksession that he supported the "effects bargaining" language in the first draft of the bill and opposed the language in the amendment.⁷² At the June 5th worksession, MCGEO attorney William Thompson reiterated MCGEO's support for the broader "effects bargaining" language in the proposed amendment and stated that "the broader language is usually included in collective bargaining legislation, and is needed in the subject bill"⁷³

At the worksession, several County Government representatives advocated keeping the more narrow language proposed in Bill 19-86, including Sean Rogers, Chief for Labor/Employee Relations and Training; James Torgesen of the Personnel Office, and Special Counsel William Willcox.⁷⁴ Mr. Torgesen explained to the Council "that the broader language was included in the police law because, when it was written, management was unaware of the potential impact of 'effects' bargaining"⁷⁵

Council President Hanna and Councilmember Fosler both supported the language in the bill, as drafted, and Councilmember Potter suggested amending the bill if language could "be drafted that would distinguish between actions the government must take in carrying out its responsibilities and actions the government could take to harass employees"⁷⁶ Council President Hanna was concerned that "inclusion of the [police 'effects bargaining'] amendment might interfere with the government's ability to implement improvements."⁷⁷

The final version of Bill 19-86, as adopted by the Council, included the more narrow "effects bargaining" language that had been proposed in the first draft of the bill.⁷⁸ To reiterate, the law allowed the parties to bargain over the "amelioration of the effect on employees when the exercise of employer rights listed in subsection (b) causes a loss of existing jobs in the unit."⁷⁹

3. Employer Rights

The first draft of Bill 19-86 identified 19 "employer rights" that were not subject to collective bargaining and that could not be impaired by a collective bargaining agreement.⁸⁰ Table 6-5 (on the next page) lists the specific "employer rights" that were enumerated in the first draft.

⁷² 5-29-86 Gilchrist Memo at p. 3, 7; 6-5-86 County Council Minutes at p. 3.

⁷³ 6-5-86 County Council Minutes at p. 3.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid. at p. 3-4.

⁷⁷ Ibid. at p. 3.

⁷⁸ See 6-5-86 County Council Minutes at 4; see also Final Bill 19-86, § 33-107(a)(7).

⁷⁹ Final Bill 19-86, § 33-107(a)(7).

⁸⁰ Bill 19-86 Staff Draft, § 33-107(b), (c).

Table 6-5. Employer Rights in Bill 19-86

| It is the right and responsibility of the employer to... |
|--|
| <ul style="list-style-type: none">• Determine the overall budget and mission of the employer and any agency of County government;• Maintain and improve the efficiency and effectiveness of operations;• Determine the services to be rendered and the operations to be performed;• Determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are to be conducted and the location of facilities;• Direct and supervise employees;• Hire, select, and establish the standards governing promotion of employees, and classify positions;• Relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;• Take actions to carry out the mission of government in situations of emergency;• Transfer, assign, and schedule employees;• Determine the size, grades, and composition of the work force;• Set the standards of productivity and technology;• Establish employee performance standards and evaluate employees, except that evaluation procedures shall be a subject for bargaining;• Make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards;• Introduce new or improved technology, research, development, and services;• Control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsections (a)(6) of this section [regarding matters affecting the health and safety of employees];• Maintain internal security standards;• Create, alter, combine, contract out, or abolish any job classification, department, operation, unit or other division or service, provided that no contracting of work which will displace employees may be undertaken by the employer unless 90 days prior to signing the contract written notice has been given to the certified representative;• Suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter section 404, any such action may be subject to the grievance procedure set forth in the collective bargaining agreement;• Issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this law, Federal or State law, or the terms of the collective bargaining agreement. |

Source: Bill 19-86 Staff Draft, § 33-107(b).

The first draft also stated that “[t]he public employer rights set forth in this section are to be considered a part of every agreement reached between the employer and an employee organization.”⁸¹ At the public hearing, Personnel Director William Garrett testified that the County Executive sought to clarify “employer rights” compared to those listed in the police collective bargaining law: “In particular, management must have the right to set standards and take advantage of new technology or research which improves the delivery of services.”⁸²

The Council amended only one portion of the “employer rights” section before enacting the final version of Bill 19-86. Acting on a suggestion offered by MCGEO attorney William Thompson, the Council agreed to allow the parties to agree on a date for notice if the County Government planned to contract out work that would displace employees.⁸³ The final language indicated that the employer could:

Create, alter, combine, contract out, or abolish any job classification, department, operation, unit or other division or service, provided that no contracting of work which will displace employees may be undertaken by the employer unless 90 days prior to signing the contract, *or such other date of notice as agreed by the parties*, written notice has been given to the certified representative.⁸⁴

The remaining “employer rights” (as listed in Table 6-5) did not change between the first draft and the final bill.

4. Collective Bargaining Process

Bill 19-86 (Section 33-108), as enacted by the Council, established the comprehensive collective bargaining process. This included:

- The timeline for collective bargaining;
- The process for resolving collective bargaining impasses; and
- The Council’s role in approving or disapproving portions of collective bargaining agreements through the budget or legislative process.⁸⁵

This section of the report describes the Council’s review and decisions on these three aspects of the collective bargaining process.

a. Timeline for Collective Bargaining

The first part of § 33-108 established, among other things, the timing of the collective bargaining process.⁸⁶ Table 6-6 summarizes the key dates in the first draft of Bill 19-86.

⁸¹ Ibid. § 33-107(e).

⁸² 4-22-86 Public Hearing Transcript at p. 10.

⁸³ 6-5-86 County Council Minutes at p. 4.

⁸⁴ Final Bill 19-86, § 33-107(b)(17) (emphasis added).

⁸⁵ See Bill 19-86 Staff Draft, § 33-108.

⁸⁶ Ibid. § 33-108(a)-(d).

Table 6-6. Summary of Key Dates in the Collective Bargaining Process

| Collective Bargaining Step | Date by Which Action Required |
|--|-------------------------------|
| Parties commence collective bargaining | November 1 |
| Appointment of mediator/fact-finder by Labor Relations Administrator | November 10 |
| Parties conclude collective bargaining | January 15 |
| Resolution of collective bargaining impasse or fact-finding | February 1 |

Source: Bill 19-86 Staff Draft, § 33-108(a)-(d)

The Personnel Committee and Councilmember Gelman both submitted amendments to Bill 19-86 that would have altered this portion of § 33-108. Both amendments:

- Altered the timeline for collective bargaining only in the first year that the bill was in effect;
- Required the parties to begin collective bargaining as soon as an employee organization was certified under the law;
- Limited collective bargaining in the first year to non-monetary issues;
- Allowed any collective bargaining agreement agreed to in the first year to go into effect as soon as it was agreed upon; and
- Required the first collective bargaining agreement to terminate at the end of the fiscal year (June 30, 1987).⁸⁷

At the public hearing, MCGEO attorney William Thompson supported the Personnel Committee's amendment, arguing that "it is absolutely unconscionable for the County to be able to delay [the bill's] implementation for approximately a year.... We support the bill's option which would permit simplified bargaining for a short agreement on non-economic items only."⁸⁸

County Executive Gilchrist opposed the Personnel Committee's amendment in his May 1986 memo to the Council, suggesting that it was "impractical."⁸⁹ Personnel Director William Garrett articulated the County Executive's opposition at the public hearing, explaining that there would be insufficient time to implement the law after it was passed and prior to bargaining."⁹⁰

At the Council's June 5th worksession, Mr. Thompson withdrew MCGEO's support for the Personnel Committee's amendment.⁹¹ (The worksession minutes do not reflect the basis for this decision.) At its June 19th worksession, the Council amended Bill 19-86 "to provide that the date for the start of negotiations for the first year the law is in effect only would be December 1, rather than November 1."⁹² This amendment did not limit the topics over which the parties could bargain in the first year. The remaining dates remained unchanged in the final draft of the bill.⁹³

⁸⁷ 5-27-86 Spengler Memo at ©44, 48.

⁸⁸ 4-22-86 Public Hearing Transcript at p. 21.

⁸⁹ 5-28-86 Gilchrist Memo at p. 7.

⁹⁰ 4-22-86 Public Hearing Transcript at p. 11.

⁹¹ 6-5-86 County Council Minutes at p. 5.

⁹² 6-19-86 County Council Minutes at p. 4.

⁹³ See Final Bill 19-86, § 33-108(a)-(d).

b. Impasse Resolution Process

Section 33-108 of Bill 19-86 also established the procedures the parties would use to resolve collective bargaining impasses between the parties. Few changes were made in this section of the bill from the first draft to the final bill. Accordingly, this section of the report summarizes the language in the final draft of the bill.

The section of the bill on impasse procedures:

- Established the position of a “mediator/fact-finder” – an individual appointed by the Labor Relations Administrator and responsible for mediating collective bargaining disputes between the parties and for engaging in fact-finding when mediation failed to resolve these disputes;
- Established a calendar for resolving collective bargaining impasses;
- Required the mediator/fact-finder to issue a report of findings of fact and recommendations on unresolved issues in dispute between the parties;
- Established factors the mediator/fact-finder must consider when making findings of fact and recommendations.⁹⁴

Table 6-7 summarizes the key dates established in this part of the final bill.

Table 6-7. Summary of Key Dates in the Impasse Resolution Procedure

| Impasse Procedure Step | Date by Which Action Required |
|--|-------------------------------|
| Appointment of mediator/fact-finder by Labor Relations Administrator | November 10 |
| Impasse deemed to exist if parties have not reached an agreement | January 15 |
| Mediator/fact-finder must issue a report of findings of fact and recommendations on matters still in dispute between the parties | February 1 |

Final Bill 19-86, § 33-108(e), (f).

Process Established for Resolution of Impasses. The impasse procedure established in Bill 19-86 differed from the impasse procedure that had been enacted as part of the police collective bargaining law. Where the police collective bargaining law required a neutral party (the Impasse Neutral) to resolve an impasse by making a binding choice between the parties’ differing proposals (i.e., binding arbitration), the impasse procedure in Bill 19-86 allowed the mediator/fact-finder to make findings and recommendations on matters in dispute between the parties.⁹⁵ The recommendations, however, were not binding on the parties and could not resolve an impasse where the parties failed to agree.

⁹⁴ Ibid. § 33-108(e), (f).

⁹⁵ Ibid. § 33-108(e)(3)(C).

The bill required the Labor Relations Administrator to appoint a mediator/fact-finder, “who may be a person recommended to her by both parties.”⁹⁶ Section I.B.7 below describes the Labor Relations Administrator. The parties split any fees or costs associated with hiring a mediator/fact-finder.⁹⁷

In the collective bargaining process, either party could declare an impasse at any time, or if the parties did not reach an agreement by January 15th, the law deemed an impasse to exist.⁹⁸ The law required the mediator/fact-finder to try to mediate impasses as a first step.⁹⁹ If the mediator/fact-finder decided that a “bona fide” impasse existed, the law established a fact-finding process for the mediator/fact-finder to use to try to resolve the impasse.¹⁰⁰ This process included the following steps:

- **Submission of Joint and Separate Memoranda.** The mediator/fact-finder required the parties to submit a joint memorandum describing all agreed-upon items and to submit separate memoranda describing all items not agreed upon.¹⁰¹
- **Submission of Evidence.** The mediator/fact-finder could require the parties, at her discretion, to submit evidence or make arguments in support of their proposals and could hold a hearing for this purpose that was not open to the public.¹⁰²
- **Submission of Report to Parties.** On or before February 1st, the mediator/fact-finder had to issue a report to the parties containing findings of fact and recommendations on the issue in dispute between the parties. The findings of fact and recommendations had to be based only on criteria established in the law. The mediator/fact-finder’s report would not be made public at this time.¹⁰³
- **Continuation of Bargaining.** After receiving the report, the parties had to bargain again for up to ten more days.¹⁰⁴
- **Submission of Reports and Memoranda to Council.** If, after continued bargaining, the parties did not reach agreement on all outstanding issues, or if one side did not accept the mediator/fact-finder’s recommendations, the mediator/fact-finder’s report would be made public by sending it to the Council. The mediator/fact-finder would delete from the report recommendations for items agreed on in the second round of bargaining. The mediator/fact-finder would also send the Council the parties’ joint memorandum of agreed-upon items and the parties would send the Council their separate memoranda of items in dispute.¹⁰⁵
- **Council Resolution of Certain Disputes.** The remaining steps in the impasse resolution procedure involve the Council and are described in the next section of this report (beginning on page 94).

⁹⁶ Ibid. § 33-108(d).

⁹⁷ Ibid.

⁹⁸ Ibid. § 33-108(e)(1).

⁹⁹ Ibid. § 33-108(e)(2).

¹⁰⁰ Ibid. § 33-108(e), (f).

¹⁰¹ Ibid. § 33-108(e)(3)(A).

¹⁰² Ibid. § 33-108(e)(3)(B).

¹⁰³ Ibid. § 33-108(e)(3)(C), (D).

¹⁰⁴ Ibid. § 33-108(f).

¹⁰⁵ See Ibid. § 33-108(f).

Table 6-8 lists the exclusive set of factors on which the mediator/fact-finder could base the findings of fact and recommendations. These factors are the same factors considered by the Impasse Neutral under the police collective bargaining law.¹⁰⁶

Table 6-8. Factors for Basis of Mediator/Fact-Finder's Report and Recommendations

| Factors on Which the Mediator/Fact-Finder Could Base Findings of Fact and Recommendations |
|---|
| Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions. |
| Comparison of wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington metropolitan area and in Maryland. |
| Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel. |
| Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County. |
| The interest and welfare of the public. |
| The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer. |

Source: Final Bill 19-86, § 33-108(e)(3)(D).

Discussion of Impasse Procedures. At the public hearing, Personnel Director William Garrett testified that County Executive Gilchrist supported the mediation/fact-finding process to resolve bargaining impasses.¹⁰⁷ He stated that “[w]e believe that the public airing of disputes will create the appropriate incentive for the parties to make their best efforts in obtaining an agreement.”¹⁰⁸

Joslyn Williams, representing the Maryland State/D.C. AFL-CIO and the Metropolitan Washington Council AFL-CIO, recommended eliminating the list of factors the mediator/fact-finder must use when developing recommendations because they were “unnecessarily limiting and could work against the best interests of management, labor and the public.”¹⁰⁹ Fred Keeney (President, Fraternal Order of Police, Maryland National Capital Park Police Lodge 30) and Dave Robbins (speaking as an individual) recommended resolving impasses through binding arbitration, as in the police collective bargaining law, rather than through mediation and fact-finding.¹¹⁰

At the Council June 5th worksession, MCGEO attorney William Thompson opposed sending the parties’ reports to the Council, reasoning that “negotiators will make a greater effort to reach an agreement on issues if only the report of the mediator/fact-finder is submitted to the Council when the parties fail to reach an agreement.”¹¹¹ Councilmember Fosler indicated at the worksession that the Personnel Committee supported the collective bargaining and impasse resolution processes established in § 33-108 as they were written.¹¹²

¹⁰⁶ See Ibid. § 33-81(b)(5)(A)-(F).

¹⁰⁷ 4-22-86 Public Hearing Transcript at p. 11.

¹⁰⁸ Ibid. at p. 11-12.

¹⁰⁹ Ibid. at p. 62.

¹¹⁰ Ibid. at p. 70, 96.

¹¹¹ 6-5-86 County Council Minutes at p. 4.

¹¹² Ibid.

c. Council Role in the Collective Bargaining Process

The remaining portions of § 33-108 in Bill 19-86 described the Council's role in resolving collective bargaining impasses between the parties. Because Bill 19-86 required mediation and fact-finding instead of binding arbitration, the Council played a slightly different role in resolving impasses between the parties under Bill 19-86 than under the police collective bargaining law.

As described above, under the adopted version of Bill 19-86, the Council received copies of the mediator/fact-finder's report and copies of the parties' joint and separate memoranda if the parties could not reach agreement on all collective bargaining issues.¹¹³ The bill then required the County Executive to submit a budget to the Council that included:

- Items that had been agreed to by the parties; and
- The County Executive's positions on items in dispute between the parties.¹¹⁴

The law explicitly authorized the Council to accept or reject (in whole or in part) any item in the budget (either agreed to by the parties or in dispute) that:

- Required an appropriation of funds;
- Required the enactment, repeal, or modification of County law or regulation; or
- Had or may have had a "present or future fiscal impact."¹¹⁵

The bill, as enacted, required that either or both parties identify these items for the Council and required the County Executive to "make a good faith effort" to ensure the Council implemented the items agreed to by the parties.¹¹⁶

The Council could hold a public hearing "to enable the parties and the public to testify on the agreement and the recommendations for resolving bargaining disputes."¹¹⁷ On or before April 15th, the final bill required the Council to indicate "by a majority vote":

- Whether it intended to appropriate funds or implement the items agreed to by the parties and to state its reasons for rejecting any of the items; and
- Its position on items in dispute between the parties that would require an appropriation of funds; that would require the enactment, repeal, or modification of County law or regulation; or that may have had a present or future fiscal impact.¹¹⁸

If disputed items remained or if the Council indicated its intent to reject any items, the Council had to appoint a representative to "to meet with the parties and present the Council's views in the parties' further negotiation"¹¹⁹ The parties then had to submit the results of their further negotiations to the Council by May 1st.¹²⁰

¹¹³ See Final Bill 19-86, § 33-108(f).

¹¹⁴ Ibid. § 33-108(g).

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid. § 33-108(h).

¹¹⁸ Ibid. § 33-108(i).

¹¹⁹ Ibid. § 33-108(j).

¹²⁰ Ibid.

The final bill gave the Council authority to take action on matters that remained in dispute between the parties:

The Council shall take whatever action it considers required by the public interest with respect to matters still in dispute between the parties. However, those actions shall not be part of the agreement between the parties unless the parties specifically incorporate them in the agreement.¹²¹

The bill, as enacted, required any collective bargaining agreement to:

Provide for automatic reduction or elimination of wage and/or benefit adjustments if:

- (a) the Council does not take action necessary to implement the agreement, or a part of it;
- (b) funds are not appropriated; or
- (c) lesser amounts than those stated in the agreement are appropriated.¹²²

Discussion of Council Role in Collective Bargaining. At the public hearing, Personnel Director William Garrett commented that where significant impasses exist, the “Council involvement will provide an additional catalyst for resolution.”¹²³ In written testimony submitted during the public hearing, Gail Ewing (writing as an individual) recommended that the Council institute a process of binding arbitration; Ms. Ewing also supported the Council’s right to reject an agreement and to send the parties back to bargaining.¹²⁴

At the Council’s June 5th worksession, two Councilmembers expressed concerns about the Council’s role in the collective bargaining process. Councilmember Scull had concern that “the Council’s role in the bargaining process under the subject legislation is too broad and should be limited to budgetary and legislative actions.”¹²⁵ And, without an explanation for the basis of his particular concern, the Council worksession minutes indicated that Councilmember Potter had concern “regarding the language ... which indicates that the Council will state its reasons for any intent to reject any part of the items agreed to by the negotiating parties.”¹²⁶

5. Election of a Certified Representative

As enacted by the Council, Bill 19-86 established an election process for certifying or decertifying an employee organization as the employees’ collective bargaining representative.¹²⁷ Under Bill 19-86, the Labor Relations Administrator received petitions for certification and decertification of employee organizations and supervised elections.¹²⁸ The bill required an employee organization to receive a majority of votes cast by employees in order to become the employees’ certified representative.¹²⁹

¹²¹ Ibid. § 33-108(k).

¹²² Ibid. § 33-108(j).

¹²³ 4-22-86 Public Hearing Transcript at p. 12.

¹²⁴ See 4-22-86 Written Testimony from Gail Ewing.

¹²⁵ 6-5-86 County Council Minutes at p. 4.

¹²⁶ Ibid.

¹²⁷ See Final Bill 19-86, § 33-106.

¹²⁸ Ibid. § 33-106(a)-(c).

¹²⁹ Ibid. § 33-106(b)(6).

An employee organization could appear on an election ballot to become an employee unit's certified collective bargaining representative in one of two ways:

- The employee organization could file a petition with the Labor Relations Administrator containing the signatures of 30 percent of the employees in a unit indicating the employees' desire for collective bargaining representation by the employee organization;¹³⁰ or
- If an employee organization has already filed a valid petition, any other employee organization could provide written proof of support from at least 10 percent of the employees in the unit to the Labor Relations Administrator.¹³¹

All election ballots also had to offer the choice that an employee did not want to be represented by any employee organization.¹³²

The final bill allowed an employee organization certified under the "Meet and Confer" law to be certified under the collective bargaining law without an election.¹³³ The Council made one change to this part of the law before the final draft. Under the first draft of the bill, an employee organization could be certified in this way if:

- The employee organization filed a certification petition within 30 days of the effective date of the law;
- No other employee organizations filed a valid petition for certification;
- No petition signed by 10 percent of employees in a unit requesting an election was filed with the Labor Relations Administrator; and
- The employee organization provides evidence to the Labor Relations Administrator that a majority of unit employees want the continued representation.¹³⁴

One of the Personnel Committee's amendments submitted with the bill would have prohibited the certification of an employee organization without an election.¹³⁵ The County Executive opposed this amendment and the Council did not incorporate the amendment into the final bill.¹³⁶

At the public hearing, MCGEO attorney William Thompson and Montgomery County Education Association President Mark Simon testified in opposition to allowing ten percent of employees in an employee unit to prevent the certified "meet and confer" representative from being certified as the collective bargaining representative without an election.¹³⁷ Mr. Thompson recommended requiring an election request under this part of the bill to contain signatures of 30 percent of the employees in a unit.¹³⁸ On a motion of Councilmember Fosler, the Council amended the bill to require that a petition requesting an election under this part of the bill contain signatures of 20 percent of the employees in a unit.¹³⁹

¹³⁰ Ibid. § 33-106(a)(1).

¹³¹ Ibid. § 33-106(b)(2).

¹³² Ibid. § 33-106(b)(2).

¹³³ Ibid. § 33-106(e).

¹³⁴ Bill 19-86 Staff Draft, § 33-106(e).

¹³⁵ 5-27-86 Spengler Memo at ©38.

¹³⁶ See 5-29-86 Gilchrist Memo at p. 4.

¹³⁷ 4-22-86 Public Hearing Transcript at p. 18, 66.

¹³⁸ Ibid. at p. 18.

¹³⁹ 5-29-86 County Council Minutes at p. 2.

Other Discussion. One amendment proposed by the Personnel Committee would have required a majority of eligible employees to vote in an election in order for an employee organization to become a certified representative.¹⁴⁰ The County Executive opposed this amendment.¹⁴¹ At the public hearing, Personnel Director William Garrett testified that the amendment “creates unnecessary hurdle[s] to representation and is not consistent with the Democratic tradition of popular elections with which we are all familiar.”¹⁴²

Other individuals who opposed this amendment at the public hearing included Joslyn Williams (Second Vice President of the Maryland State/D.C. AFL-CIO and President of the Metropolitan Washington Council AFL-CIO) and Maria Coleman (President of the Latin American Council for Advancement).¹⁴³ Ms. Williams observed that “[e]lected officials do not have to live with this restriction. And we see no reason why public employees should.”¹⁴⁴

At the Council’s May 1986 worksession, Councilmember Potter supported the idea of requiring a minimum number of voting employees to certify an election and made a motion to incorporate the Personnel Committee’s amendment into the bill; however, the motion did not come to a vote.¹⁴⁵ Ultimately, Councilmember Potter indicated he would support the language in the bill.¹⁴⁶

6. Bargaining Units

Bill 19-86 defined two units of employees for collective bargaining purposes – a Services, Labor, and Trades (SLT) unit and an Office, Professional, and Technical (OPT) unit.¹⁴⁷ Personnel Director Garrett explained to the Council at the public hearing that the Chief Administrative Officer established these two units under the “Meet and Confer” law and their continuation would “provide for an easy transition from Meet and Confer to the Collective Bargaining Relationship.”¹⁴⁸

The Service, Labor, and Trades unit consisted of:

Eligible classes that are associated with service/maintenance and skilled crafts. This means job classes in which workers perform duties that result in or contribute to the comfort and convenience of the general public or that contribute to the upkeep and care of buildings, facilities, or grounds of public property. Workers in this group may operate specialized machinery or heavy equipment. These job classes may also require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work that is acquired through on the job training and experience or through apprenticeship or other formal training programs.¹⁴⁹

¹⁴⁰ 5-27-86 Spengler Memo at ©37.

¹⁴¹ 5-29-86 Gilchrist Memo at p. 4.

¹⁴² 4-22-86 Public Hearing Transcript at p. 8-9.

¹⁴³ Ibid. at p. 64, 75.

¹⁴⁴ 4-22-86 Public Hearing Transcript at p. 64.

¹⁴⁵ 5-29-86 County Council Minutes at p. 3.

¹⁴⁶ Ibid.

¹⁴⁷ Final Bill 19-86, § 33-105(a).

¹⁴⁸ 4-22-86 Public Hearing Transcript at p. 7-8.

¹⁴⁹ Final Bill 19-86, § 33-105(a)(1).

The Office, Professional, and Technical unit consisted of:

All eligible classes associated with office, professional, paraprofessional, and technical functions.

- (A) Office: Job classes in which workers are responsible for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.
- (B) Professional: Job classes that require special and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge.
- (C) Paraprofessional: Job classes in which workers perform, in a supportive role, some of the duties of a professional or technician. These duties usually require less formal training and/or experience than is normally required for professional or technical status.
- (D) Technical: Job classes that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training.¹⁵⁰

The Personnel Committee submitted an amendment with the bill that would have created a single bargaining unit.¹⁵¹ County Executive Gilchrist opposed a single unit, reporting that “[b]argaining units have traditionally developed around workers with a community of interest” and that the County Government had no problems working with the two units under the “Meet and Confer” law.¹⁵²

At the public hearing, MCGEO attorney William Thompson, Maryland State/D.C. AFL-CIO Vice President Joslyn Williams, and Latin American Council for Advancement President Maria Coleman all supported the two-unit structure.¹⁵³ During its May 1986 worksession, the Council agreed to the two bargaining unit structure.¹⁵⁴

7. Labor Relations Administrator

As adopted by the Council, the final version of Bill 19-86 created a position of “Labor Relations Administrator” (LRA) to implement and administer the sections of the law addressing the selection and certification of employee organizations, prohibited practices, and the choice of a mediator/fact-finder.¹⁵⁵ The Labor Relations Administrator’s duties included:

- Creating regulations and procedures to implement and administer the sections of the law overseen by the Labor Relations Administrator;
- Requesting needed assistance, service, and data from the County Executive and an employee organization;
- Holding hearings;

¹⁵⁰ Ibid. § 33-105(a)(2).

¹⁵¹ 5-27-86 Spengler Memo at ©35-36.

¹⁵² 5-29-86 Gilchrist Memo at p. 4.

¹⁵³ 4-22-86 Public Hearing Transcript at p. 16, 63, 74.

¹⁵⁴ 5-29-86 County Council Minutes at p. 1.

¹⁵⁵ Final Bill 19-86, § 33-103(a).

- Holding and conducting elections for the certification or decertification of employee organizations;
- Investigating and resolving allegations of prohibited practices, deferring to negotiated grievance procedures or the Law Enforcement Officers Bill of Rights where necessary;
- Determining unresolved issues of a person's inclusion or exclusion from a unit;
- Obtaining support and expending funds allocated in the County budget as necessary; and
- Exercising other powers and performing other duties as specified in the law.¹⁵⁶

Under the law as enacted by the Council, the County Executive appointed and the Council confirmed the first Labor Relations Administrator to a four-year term.¹⁵⁷ After the first term, the County Executive appointed a Labor Relations Administrator to a five-year term, picking from a list of five individuals agreed upon by any certified representative(s) and the Chief Administrative Officer.¹⁵⁸ The Council had to confirm the County Executive's choice.¹⁵⁹ If employees had no certified representative, the County Executive appointed and the Council confirmed a Labor Relations Administrator under the process for appointing the first LRA.

At the Council's June 24th worksession, Councilmember Scull questioned the authority of the Labor Relations Administrator to adopt regulations and suggested this authority should remain with the County Executive.¹⁶⁰ Council Special Attorney William Willcox stated that the Labor Relations Administrator should retain this authority because the County Executive will be a party to collective bargaining negotiations.¹⁶¹

Personnel Committee Amendments. The Personnel Committee submitted two possible amendments to the bill addressing the choice of the Labor Relations Administrator, both of which the County Executive and MCGEO opposed.¹⁶²

The first amendment would have allowed a certified representative to veto the reappointment of a Labor Relations Administrator, but would not have allowed the representative to participate in the process of nominating Labor Relations Administrators.¹⁶³ The second amendment would have required any certified representative, the CAO, *and the Council* to develop a list of five possible LRAs from which the County Executive would choose.¹⁶⁴ The Council did not incorporate either of these amendments into the final bill.

¹⁵⁶ Ibid. § 33-103(a)(1)-(8).

¹⁵⁷ Ibid. § 33-103(b)(2).

¹⁵⁸ Ibid. § 33-103(b)(3).

¹⁵⁹ Ibid.

¹⁶⁰ 6-24-86 County Council Legislative Minutes at p. 5908.

¹⁶¹ Ibid.

¹⁶² See 5-27-86 Spengler Memo at ©45, 46; 5-29-86 Gilchrist Memo at p. 8; 6-5-86 County Council Minutes at p. 5.

¹⁶³ See 5-27-86 Spengler Memo at ©45.

¹⁶⁴ Ibid. at ©46.

Employee Rights

As adopted by the Council, Bill 19-86 established a set of employee rights under the collective bargaining process.¹⁶⁵ It also outlined certain rights and/or duties of the employer and an employee organization. Table 6-9 summarizes these rights and duties outlined in the final version of the bill.

Table 6-9. Summary of Rights and Duties in the County Government Collective Bargaining Bill

| Employee Rights | Certified Representative Duties | Employer Duties |
|---|---|---|
| <ul style="list-style-type: none"> • To form, join, support, contribute to, or participate in an employee organization or its lawful activities. • To refrain from forming, joining, supporting, contributing to, or participating in an employee organization or its lawful activities. • To be fairly represented by a certified representative, if any. | <ul style="list-style-type: none"> • To serve as the exclusive bargaining agent for all employees in the unit for which it is certified. • To represent fairly and without discrimination all employees in the unit without regard to whether the employees are members of the employee organization, pay dues or other contributions to it, or participate in its affairs (seeking to enforce a valid agency shop provision does not violate this duty). | <ul style="list-style-type: none"> • To extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties. |
| Right of Certified Representative | | |
| <ul style="list-style-type: none"> • The right of a certified representative to receive voluntary dues or service fee deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this article. A collective bargaining agreement may not include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision. | | |

Source: Final Bill 19-86, § 33-104

Agency Shop Provisions. As indicated in the table above, a certified representative had the right to negotiate for an “agency shop” provision in a collective bargaining agreement.¹⁶⁶ As defined in the bill, an “agency shop” provision refers to a provision in a collective bargaining agreement:

[R]equiring as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members.¹⁶⁷

The definition, however, contained some limitations on agency shop provisions:

An agency shop agreement shall not require an employee to pay initiation fees, assessments, fines, or any other collections or their equivalent as a condition of continued employment. A collective bargaining agreement shall not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the agreement may require that employee to pay an amount equal to the service fee to a non-religious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, and to give to the employer and the certified representative written proof of this payment.¹⁶⁸

¹⁶⁵ Final Bill 19-86, § 33-104.

¹⁶⁶ See Bill 19-86 Staff Draft, § 33-104(d).

¹⁶⁷ See Ibid. § 33-102(1).

¹⁶⁸ See Ibid (emphasis in original).

The Personnel Committee submitted two amendments addressing agency shop provisions with the draft bill. The first amendment would have prohibited agency shop agreements entirely.¹⁶⁹ The second amendment would have allowed an agency shop provision only for employees with less than ten years of service in the County merit system.¹⁷⁰

At the public hearing, Personnel Director William Garrett expressed County Executive Gilchrist's opposition to any limitation on employees' right to bargain for an agency shop provision in a collective bargaining agreement.¹⁷¹ MCGEO attorney William Thompson and AFL-CIO representative Joslyn Williams also expressed their support for an agency shop provision with no limitations, as in the original draft of the bill.¹⁷²

County Executive Gilchrist reiterated his opposition to the agency shop amendments in his May 29th memo to the Council.¹⁷³ At the Council's May 29th worksession, Councilmember Hanna expressed concern about requiring an employee to join a union to keep a job.¹⁷⁴

An unidentified worksession participant also expressed concern about how to resolve disagreements between a union and an employee in picking an appropriate charitable organization if an employee objects on religious grounds to paying an employee organization.¹⁷⁵ In the final version of Bill 19-86, the Council amended the language defining "agency shop" to address this concern. It read:

However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative shall adhere at all times to all federal constitutional requirements in its administration of an agency shop system maintained by it.¹⁷⁶

8. Preemption of Laws or Regulations

The staff draft of Bill 19-86 contained language that described the relationship between collective bargaining agreements and previously enacted laws, executive orders, and regulations.¹⁷⁷ The bill stated:

Any laws, executive orders, or regulations adopted by the County and any department or agency of the County that are or may be considered inconsistent with the provisions of this article shall not be held to be repealed or modified until they are specifically repealed or modified by the County or any department or agency of the County.¹⁷⁸

¹⁶⁹ 5-27-86 Spengler Memo at ©39.

¹⁷⁰ Ibid. at ©40.

¹⁷¹ 4-22-86 Public Hearing Transcript at p. 9.

¹⁷² Ibid. at p. 18-19, 64.

¹⁷³ 5-29-86 Gilchrist Memo at p. 5.

¹⁷⁴ 5-29-86 County Council Minutes at p. 3.

¹⁷⁵ 5-29-86 County Council Minutes at p. 3.

¹⁷⁶ Final Bill 19-86, § 33-102(1).

¹⁷⁷ Bill 19-86 Staff Draft, § 33-112.

¹⁷⁸ Ibid. § 33-112.

In April 1986, MCGEO attorney William Thompson sent a letter to Personnel Director William Garrett seeking to clarify the meaning of this section of the bill.¹⁷⁹ Mr. Thompson explained that he interpreted the above language to mean that:

All merit system rules, policies, and procedures in effect at the time this bill becomes law, and which concern subjects for bargaining, will continue in effect unless and until they are directly amended or affected by a collective bargaining agreement executed by the County and a certified representative.¹⁸⁰

By reply letter, Personnel Director Garrett informed Mr. Thompson that Mr. Thompson's interpretation of the language was incorrect and that "[t]he language [in the bill] appears to permit inconsistencies to remain in effect until they are specifically repealed or modified."¹⁸¹

Mr. Thompson then sent a letter dated May 8th to Council Special Attorney William Willcox with alternate language so the bill "might be clarified"¹⁸² This proposed language stated:

Any laws, executive orders, or regulations of the County and any department or agency of the County that are or may be considered inconsistent with the provisions of this article, shall not be held to be repealed or modified [sic] until they are specifically repealed or modified by the County, and any department or agency of the County, or the provisions of the collective bargaining agreement between the County and a certified representative.¹⁸³

In the Council's June 5th worksession, the Council considered alternate language proposed by MCGEO that was expanded from Mr. Thompson's May 8th letter. This language stated:

- (a) Nothing contained in this article shall be construed to repeal any laws, executive orders, rules, or regulations adopted by the County and any department or agency thereof not inconsistent with the provisions of this article.
- (b) Any executive orders, rules or regulations of the County and any department or agency of the County which concern any subject for bargaining pursuant to the provisions of this article shall not be held to be repealed or modified except to the extent that their subject matter is governed by the provisions of a collective bargaining agreement between the County and a certified exclusive employee representative.¹⁸⁴

At the worksession, Mr. Willcox commented that "[MCGEO's] amendment might interfere with the implementation of subsection 33-108(g) which provides for the identification of any term or condition agreed to in the contract that requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation."¹⁸⁵ Councilmember Potter agreed that "clarifying language needs to be added to this section to indicate that the agreement will not supersede any order, rule, or regulation which is in conflict with the collective bargaining agreement if it has not been identified as being in conflict."¹⁸⁶

¹⁷⁹ 5-27-86 Spengler Memo at ©52-53.

¹⁸⁰ Ibid. at ©52.

¹⁸¹ Ibid. at ©54 (emphasis in original).

¹⁸² Ibid. at ©55.

¹⁸³ 5-27-86 Spengler Memo at ©55.

¹⁸⁴ 6-5-86 County Council Minutes at p. 5.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

The Council asked for “clarifying amendments be made to subsection 33-108(g) to emphasize the need for identification of County orders, rules or regulations that are in conflict with the collective bargaining agreement” The Council then approved MCGEO’s proposed amendment, as redrafted to conform to § 33-108(g).¹⁸⁷

The language in the bill was modified to reflect the above discussion. Where MCGEO’s proposed language allowed a collective bargaining agreement to automatically repeal or modify an executive order, rule, or regulation that was inconsistent with subject matter in a collective bargaining agreement. Under the final version of the bill, as enacted by the Council, language in a collective bargaining agreement that was inconsistent with an order, rule, or regulation approved by the Council would only govern if the conflict was identified to the Council “prior to the Council’s ratification of the collective bargaining agreement ...”¹⁸⁸

The final bill contained the following language:

- (a) Nothing contained in this article shall be construed to repeal any law, executive order, rule, or regulation adopted by the County or any of its departments or agencies that is not inconsistent with the provisions of this article.
- (b) Any executive order, rule, or regulation of the County or any of its departments or agencies that regulates any subject that is bargainable under this article shall not be held to be repealed or modified by a provision of a collective bargaining agreement negotiated under this article except to the extent that the application of the order, rule, or regulation is inconsistent with the provision in the collective bargaining agreement. However, if the inconsistent order, rule, or regulation is subject to and has received Council approval, the collective bargaining agreement shall not govern unless the order, rule, or regulation was identified to the Council by the parties prior to the Council’s ratification of the collective bargaining agreement, as required by section 33-108(g); or unless the order, rule, or regulation is repealed or modified by the Council.¹⁸⁹

9. Cost-of-Living Adjustment

As enacted by the Council, Bill 19-86 repealed a section of the “Meet and Confer” law that addressed cost-of-living adjustments and maximum salaries for County Government employees.¹⁹⁰ The section of the “Meet and Confer” law addressing these issues is described in detail in Chapter X, which begins on page 161.

This portion of Bill 19-86 that repealed the earlier cost-of-living provision stated:

This section [of the law] is automatically repealed upon certification that the County merit system employees in the units established under Article VII are represented for the purpose of collective bargaining under Article VII of this Chapter.¹⁹¹

¹⁸⁷ Ibid. at p. 6.

¹⁸⁸ Final Bill 19-86, § 33-112.

¹⁸⁹ Final Bill 19-86, § 33-112.

¹⁹⁰ Ibid. § 33-74(d).

¹⁹¹ Ibid.

10. Prohibition on Strikes and Lockouts

Charter § 511 required any collective bargaining law to prohibit strikes or work stoppages by officers or employees of the County Government.¹⁹² The prohibitions and consequences enacted by the Council in this section of Bill 19-86 mirrored the language in the corresponding section of the police collective bargaining law.

Bill 19-86, as enacted by the Council, prohibited employees and employee organizations from striking and prohibited the County Government from locking out employees.¹⁹³ Like the police collective bargaining law, Bill 19-86 also prohibited the County Executive from paying any employee for a period when the employee was engaged in a strike.¹⁹⁴

In addition, the final bill gave the Labor Relations Administrator authority to investigate and hold hearings on alleged violations of this portion of the law.¹⁹⁵ If the Labor Relations Administrator found that a violation occurred, the County Executive could:

- Impose disciplinary action, including dismissal from employment, on employees engaged in prohibited conduct;
- Terminate or suspend an employee organization's dues deduction privilege; and
- Revoke the certification of and disqualify the employee organization from participation in representation elections for up to two years.¹⁹⁶

11. Prohibited Practices

The final version of Bill 19-86, as enacted by the Council, outlined a list of "prohibited practices" for both the employer and an employee organization.¹⁹⁷ In the bill, the Labor Relations Administrator was given responsibility for investigating, holding hearings on, determining the validity of, ordering parties to stop, and crafting remedies for prohibited practices.¹⁹⁸

The law included the following examples of remedies to prohibited practices:

- Reinstating employees with or without back pay;
- Making employees whole for any losses resulting from a prohibited practice; and
- Withdrawing or suspending an employee organization's right to negotiate or continue an agency shop provision or a voluntary dues or service fee deduction provision.¹⁹⁹

¹⁹² Charter of Montgomery County, Maryland, § 511, adopted November 6, 1984.

¹⁹³ Final Bill 19-86, § 33-111(a).

¹⁹⁴ *Ibid.* § 33-111(b).

¹⁹⁵ Final Bill 19-86, § 33-111(c).

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.* § 33-109.

¹⁹⁸ *Ibid.* § 33-109(c), (d).

¹⁹⁹ *Ibid.* § 33-109(d).

Table 6-10 summarizes the practices prohibited in the law.

Table 6-10. Summary of Prohibited Practices in Bill 19-86

| Employers are Prohibited From... | Employee Organizations and Employees Are Prohibited From... |
|--|--|
| <ul style="list-style-type: none"> • Interfering with, restraining or coercing employees in the exercise of any rights granted to them under the collective bargaining law. • Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it (excluding voluntary dues or service fee deductions and reasonable use of County facilities to communicate with employees). • Encouraging or discouraging membership in any employee organization by discriminating in hiring, tenure, wages, hours, or conditions of employment. • Discharging or discriminating against a public employee for filing charges, giving testimony, or otherwise lawfully aiding the administration of the collective bargaining law. • Refusing to bargain collectively with a certified representative. • Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects. • Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement. • Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached between the employee and the certified representative under the collective bargaining law. • Engaging in a lockout of employees. | <ul style="list-style-type: none"> • Interfering with, restraining or coercing the employer or employees in the exercise of any rights granted to them under the collective bargaining law. • Restraining, coercing or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. • Refusing to bargain collectively with the employer if an employee organization is the certified representative. • Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects. • Hindering or preventing, by threats of violence, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or exit from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance by any person, public or private. • Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, supplies, equipment or services by the employer. • Taking or retaining unauthorized possession of property of the employer or refusing to do work or use certain goods or materials as lawfully required by the employer. • Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed or to be performed. |

Source: Final Bill 19-86, § 33-109 (a), (b)

Except for one provision, these prohibited practices are the same as those listed in the police collective bargaining law. The one difference is that the police collective bargaining law prohibited an employee organization or an employee from doing the following, while Bill 19-86 did not:

Forcing or requiring the employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification.²⁰⁰

²⁰⁰ Compare Table 5-10 in Chapter V.

II. HISTORY OF AND LEGISLATIVE ISSUES IN BILL 26-99

Bill 26-99, enacted on March 7, 2000, made several substantive changes to the County Collective Bargaining law, including adding binding arbitration as the impasse resolution mechanism.²⁰¹ The table below provides key dates related to Bill 26-99.

Table 6-11. Key Dates for Bill 26-99

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|---|-------------------|---------------------|---------------|
| Sept. 14, 1999 | Nov. 16, 1999 | MFP Committee Nov. 29, 1999 Feb. 24, 2000 | March 7, 2000 | March 16, 2000 | June 15, 2000 |
| Bill Sponsored By: | | Councilmembers Subin and Silverman | | | |

As enacted by the Council, Bill 26-99:

- Required binding arbitration (last, best offer) for the resolution of impasses under the County Collective Bargaining law;
- Altered the dates for collective bargaining and impasse resolution, giving the parties additional time in the collective bargaining process;
- Modified the functions of the Labor Relations Administrator; and
- Revised the process for certifying an employee organization.

On March 7, 2000, the Council passed Bill 26-99 on a 5-3 vote. Councilmembers Phil Andrews, Blair Ewing, Isiah Leggett, Steven Silverman, and Michael Subin voted in favor of the bill; Councilmembers Nancy Dacek, Betty Ann Krahne, and Marilyn Praisner voted against the bill.²⁰² Councilmember Derick Berlage was absent.²⁰³

A. Legislative History of Bill 26-99

The Council introduced Bill 26-99 on September 14, 1999; the bill was sponsored by Councilmembers Michael Subin and Steven Silverman.²⁰⁴ The Council held a public hearing on the bill on November 16, 1999. There were two speakers at the public hearing: James Torgesen, the County's Labor/Employee Relations Manager, and William Thompson, General Counsel of UFCW Local 1994, MCGEO, the certified employee organization under the County Collective Bargaining law.

²⁰¹ See Final Bill 26-99, § 33-108.

²⁰² 3-7-00 Council Legislative Minutes at p. 3.

²⁰³ Ibid.

²⁰⁴ 9-14-99 Council Legislative Minutes at p. 2; 9-14-99 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1.

Mr. Torgeson testified on behalf of County Executive Douglas Duncan.²⁰⁵ He stated that the County Executive supported the “direction” of the proposed amendments in the bill, but suggested a number of amendments.²⁰⁶ Mr. Thompson testified that MCGEO supported Bill 26-99 and “strongly urged” the Council to enact it into law.²⁰⁷

The Management and Fiscal Policy Committee held two worksession on Bill 26-99, on November 29, 1999 and February 24, 2000.²⁰⁸ At the February 2000 worksession, the MFP Committee recommended (2-1) against adopting Bill 26-99, but recommended certain amendments to the bill if the Council decided to adopt it.²⁰⁹ At the MFP Committee worksessions, Councilmembers Praisner and Krahnke recommended against the bill and Councilmember Andrews supported the bill.²¹⁰

As indicated earlier, in March 2000, the Council voted (5-3) to enact Bill 26-99, with several amendments from the version introduced by the Council in September 1999.²¹¹ The Council reviewed two drafts of Bill 26-99, Drafts #2 (introduced and reviewed by the MFP Committee) and #5 (reviewed and amended at the Council’s March 7, 2000 legislative session).

B. Major Legislative Issues

Bill 26-99 and the amendments proposed by County Executive Duncan, MCGEO, and Councilmembers addressed numerous issues. The final bill enacted by the Council incorporated several amendments, but not others. The amendments to Bill 26-99 that were adopted addressed the following topics:

- Impasse resolution;
- Collective bargaining calendar;
- Certification of an employee organization; and
- Role of the Labor Relations Administrator.²¹²

The amendments to Bill 26-99 that were considered but not adopted included:

- Excluding additional groups of employees from participation in the bargaining units;
- Adding additional groups of employees to the bargaining units;
- Adding language to further define the employer’s rights in the law;
- Increasing the maximum term of a collective bargaining from three years to five years; and
- Altering the factors the mediator/arbitrator could use to decide between offers.

²⁰⁵ See Written Public Hearing Testimony of James Torgesen, County Labor/Employee Relations Manager at p. 1.

²⁰⁶ See *Ibid.* at p. 2-6.

²⁰⁷ See Written Public Hearing Testimony of William Thompson, Attorney for MCGEO-UFCW Local 1994 at p. 1-3.

²⁰⁸ See 11-29-99 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1 [hereinafter “11-29-99 Faden Memo”]; 2-24-00 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1 [hereinafter “2-24-00 Faden Memo”].

²⁰⁹ 2-24-00 MFP Committee Minutes at p. 4.

²¹⁰ *Ibid.*

²¹¹ See Final Bill 26-99.

²¹² *Ibid.*

This section of the report summarizes the Council's discussion on these issues.

1. Impasse Resolution

Bill 26-99, as introduced by the Council in September 1999, proposed amending the impasse resolution process in the County Collective Bargaining law.²¹³ Specifically, the language in Bill 26-99 substituted a process of mediation and binding arbitration for the process of mediation and fact-finding instituted when the law was originally enacted in 1986.

The binding arbitration process proposed in Bill 26-99 differed from the binding arbitration processes adopted as part of the Police Labor Relations law and the Fire and Rescue Collective Bargaining law. Both the Police Labor Relations law and the Fire and Rescue Collective Bargaining law have "last best offer" arbitration – each party presents its final offer of a total contract (or a total offer for all remaining disputed issues) to the arbitrator and the arbitrator picks the "more reasonable" offer.²¹⁴ An alternative form of binding arbitration – termed "conventional" arbitration or "split the difference" arbitration – requires each party to submit its final offers issue-by-issue.²¹⁵

The form of binding arbitration proposed in Bill 26-99 was a "hybrid" of these two types of arbitration.²¹⁶ Under Bill 26-99:

[E]conomic issues would be decided on a last best offer total package basis, but the arbitrator could decide each non-economic issue separately and would not be limited to the parties' offers. Under the bill the arbitrator would decide which issues are economic and which are non-economic.²¹⁷

County Executive Duncan recommended the Council amend Bill 26-99 to include "last best offer" arbitration in place of a hybrid system.²¹⁸ The County Executive amendment would have made the arbitration process in the County Collective Bargaining law adhere to the same process outlined in the Police Labor Relations law and the Fire and Rescue Collective Bargaining law. MCGEO opposed the County Executive's amendment and supported the process outlined in Bill 26-99; in a letter to Council staff, MCGEO wrote:

The reason this bill ... varies from the complete "winner-take-all" system used in the two other bargaining laws [is] that while the economic benefits of employment for those in the MCGEO bargaining units are basically uniform, working conditions vary greatly. In the Police and Fire and Rescue bargaining units, working conditions as well as economic benefits are relatively homogeneous. However, MCGEO-represented employees have working conditions which are as varied as the myriad of job classifications included in the blue collar and white collar units.²¹⁹

²¹³ Bill 26-99 Draft #2, § 33-108.

²¹⁴ See Final Bill 71-81, § 33-81; Final Bill 21-96, § 33-153(d)-(i).

²¹⁵ See 11-29-99 Faden Memo at p. 3.

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ See *Ibid.* at ©16 (public hearing testimony of James Torgesen); ©22 (County Executive's proposed amendment).

²¹⁹ *Ibid.* at ©32-33 (11-22-99 Letter from MCGEO attorney William Thompson to Michael Faden, Senior Legislative Attorney at p. 2-3).

Councilmembers Praisner, Andrews, and Krahnke discussed binding arbitration at the MFP Committee's November 1999 worksession and deferred deciding between the alternate proposals at the request of Office of Human Resources Director Marta Brito Perez.²²⁰ Ms. Perez indicated that management and union representatives needed to discuss the issue further and would report back to the Committee.²²¹

In February 2000, the Office of Human Resources and MCGEO reported back to the MFP Committee that they "agreed to support an amendment to adopt the last best offer for the entire package ('total package') process that is used in the police collective bargaining unit."²²²

In a 2-1 vote, the MFP Committee recommended a "'2 package last best offer' approach" where each party would present its last best offer on both economic issues and non-economic issues and the arbitrator would choose the most reasonable offer of each.²²³ Councilmembers Praisner and Krahnke supported this approach and Councilmember Andrews did not.

Councilmember Andrews supported the hybrid approach proposed in the first draft of Bill 26-99.²²⁴ A MCGEO representative at the worksession (unidentified in the Council minutes) indicated MCGEO supported either a last best offer total package approach or the approach in the bill.²²⁵

The MFP Committee ultimately recommended (2-1) against the Council enacting Bill 26-99, with Councilmembers Praisner and Krahnke voting to not recommend the bill and Councilmember Andrews voting to recommend the bill.²²⁶ At the Council's March 2000 legislation session, Councilmember Andrews presented the MFP Committee's recommendation and stated his objection to it.²²⁷

Councilmember Andrews then presented an amendment "to substitute the last best offer total package approach for the two-package approach recommended by the Committee majority."²²⁸ Councilmember Praisner explained the Committee's support for the two-package, last best offer approach as follows:

[T]he majority of the Committee was concerned that without a separation of fiscal and non-fiscal issues, there would not be adequate consideration of the non-compensation issues as the arbitrators tended to focus on that one item.²²⁹

The final version of Bill 26-99 adopted by the Council in March 2000 did not include the two-package, last best offer approach recommended by the MFP Committee. Instead, the final bill incorporated the total package, last best offer approach to binding arbitration, which had been recommended by Councilmember Andrews as well as the County Executive.²³⁰

²²⁰ 11-29-99 MFP Committee Minutes at p. 2.

²²¹ Ibid.

²²² 2-24-00 Faden Memo at p. 3.

²²³ Ibid. at p. 4.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ 2-24-00 MFP Committee Minutes at p. 4.

²²⁷ 3-7-00 Council Legislative Minutes at p. 2.

²²⁸ Ibid.

²²⁹ Ibid. at p. 3.

²³⁰ Ibid.

2. Collective Bargaining Calendar

Bill 26-99 also amended dates in the County Collective Bargaining law related to the impasse resolution process.²³¹ The draft of the bill introduced by the Council pushed several of the dates in the law back one month.²³²

In the public hearing on Bill 26-99, Mr. Torgesen, representing the County Executive, stated that County Executive Duncan supported moving the dates in the law, “however, the proposed March 1 date [for the arbitrator to select a proposal] leaves little time for the Executive to finalize budget recommendations and documents for publication on March 15.”²³³ Mr. Torgesen proposed alternate dates.²³⁴

Table 6-12 summarizes key dates in the law before the Council enacted Bill 26-99, the dates proposed in the bill, suggested amendments, and the dates in the final version of the bill.²³⁵

Table 6-12. Comparison of Key Collective Bargaining Dates

| Collective Bargaining Step | Date in Law Before Bill 26-99 | Date Proposed in Bill 26-99 | Date Proposed by County Executive | Date in Final Version of Bill 26-99 |
|---|-------------------------------|-----------------------------|-----------------------------------|-------------------------------------|
| Parties commence collective bargaining | November 1 | November 1 | -- | November 1 |
| Parties conclude collective bargaining (declaration of impasse) | January 15 | February 15 | February 1 | February 1 |
| Resolution of collective bargaining impasse (selection of most reasonable offer) | February 1 | March 1 | February 15 | February 15 |
| Council vote on intention to fund or implement collective bargaining agreement | May 1 ²³⁶ | May 1 | -- | May 1 |
| Parties conclude negotiations if Council declares intent not to fund or implement agreement | May 10 ²³⁷ | May 10 | -- | May 10 |

Source: Bill 26-99 Draft #2, § 33-108; 11-29-99 Faden Memo at ©23-24; Final Bill 26-99, § 33-108

At the MFP Committee’s November 1999 worksession, the Committee recommended that “deadline for the arbitrator’s award be February 15, as recommended by the County Executive.”²³⁸ In the Committee’s February 2000 worksession, Council staff reported that the Office of Human Resources’ staff and MCGEO representatives agreed to move the dates

²³¹ See Final Bill 26-99, § 33-108(a), (d), (e), (f).

²³² See Bill 26-99 Draft #2, § 33-108(a), (e), (f).

²³³ 11-29-99 Faden Memo at ©17 (public hearing testimony of James Torgesen).

²³⁴ Ibid. at ©17, 23-24.

²³⁵ Note, the dates in the law before the Council enacted Bill 26-99 in Table 6-12 (above) may differ from the dates described earlier in this chapter. In 1993, the Council enacted Bill 3-93, which changed some dates in the law from those originally enacted in 1986. The County Collective Bargaining law and Bill 26-99 reflected those 1993 changes. Bill 3-93 is described in more detail in Chapter IX, which begins on page 156.

²³⁶ Changed from April 15 by Bill 3-93.

²³⁷ Changed from May 1 by Bill 3-93.

²³⁸ 11-29-99 MFP Committee Minutes at p. 3.

proposed in the law forward half a month, to the dates proposed by County Executive Duncan.²³⁹ The Committee agreed with this recommendation.²⁴⁰ The Council enacted Bill 26-99 with the dates recommended by County Executive Duncan, subsequently endorsed by MCGEO and the MFP Committee.²⁴¹

3. Certification of an Employee Organization

The final version of Bill 26-99 added a section to the law that declared that if an employee organization was certified in an election, and that organization replaced an existing employee organization, then the new employee organization “must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous organization was party to.”²⁴²

Councilmembers did not discuss this provision either at the MFP Committee or during the full Council’s legislative session. Bill 26-99 was enacted with this provision as proposed in the first version of the bill.

4. Role of the Labor Relations Administrator

The final version of Bill 26-99 added a duty to the Labor Relations Administrator’s responsibilities under the law.²⁴³ Specifically, Bill 26-99 added that the Labor Relations Administrator must “determine any issue regarding the negotiability of any collective bargaining proposal.”²⁴⁴

County Executive Duncan proposed including additional language in the section of the law describing the Labor Relations Administrator.²⁴⁵ The County Executive’s amendment stated:

The Administrator must not diminish, restrict, or place conditions on the employer rights in Section 107(b) when the Administrator determines if a collective bargaining proposal is negotiable.²⁴⁶

The County Executive suggested this language “to insure that employer rights are not diminished, restricted or otherwise conditioned. This change will serve as additional guidance to the parties, and in particular, to the Labor Relations Administrator, who is required by the law to interpret and adjudicate negotiability or other disputed applications of the law.”²⁴⁷ MCGEO did not support the County Executive’s proposed amendment, indicating concern “that the County will try to use this proposed new language to shift the balance which has existed since 1986 by claiming in a court appeal that the Council has enacted this amendment to criticize or somehow repudiate the LRA decisions regarding negotiability which have been issued between 1986 and 1999.”²⁴⁸

The MFP Committee and the Council did not act on County Executive Duncan’s proposal.

²³⁹ 2-24-00 Faden Memo at p. 4.

²⁴⁰ 2-24-00 MFP Committee Minutes at p. 4.

²⁴¹ 3-7-00 Council Legislative Minutes at p. 3.

²⁴² Final Bill 26-99, § 33-106(a)(5).

²⁴³ See *Ibid.* § 33-103(a)(8).

²⁴⁴ *Ibid.*

²⁴⁵ 2-24-00 Faden Memo at ©25.

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.* at ©20.

²⁴⁸ *Ibid.* at ©35-36.

5. Other Proposed Amendments – Not Included in Final Bill

The Council did not enact several other proposed amendments to Bill 26-99 from both County Executive Duncan and MCGEO, including the County Executive's proposals to:

- Exclude confidential employees from participating in the existing bargaining units;²⁴⁹
- Define in the law the probationary period for new employees as “at least 12 months;”²⁵⁰ and
- Allow collective bargaining agreements to last for five years, instead of three years.²⁵¹

MCGEO's proposed amendments not enacted by the Council included:

- Adding non-attorney's in the State's Attorney's Office; temporary, seasonal, and substitute employees; and Police and Fire and Rescue sergeants to the bargaining units;²⁵² and
- Further defining the scope of the Council's authority to review terms and conditions in a collective bargaining agreement.²⁵³

²⁴⁹ Ibid. at ©23.

²⁵⁰ 2-24-00 Faden Memo at ©23.

²⁵¹ Ibid. at ©24.

²⁵² Ibid. at ©37-38.

²⁵³ Ibid. at ©36-37.

CHAPTER VII. Establishing Collective Bargaining for County Career Firefighters

The history of collective bargaining for Montgomery County career firefighters includes several stages, described in this chapter. In November 1987, the County Council enacted emergency legislation to establish a separate collective bargaining unit for firefighters under the County Government's collective bargaining law. This legislation was prompted by separate legislation enacted in October 1987 that transferred employment of career firefighters from the independent fire corporations to the County merit system.

Seven years later, a group of Montgomery County career firefighters successfully placed a question on the November 1994 general election ballot to add a new section to the County Charter requiring collective bargaining with binding arbitration for firefighters. Following approval of this ballot question by voters, the Council enacted legislation to implement the new section of the Charter.

This Chapter summarizes these events, and is organized as follows:

- **Section I, Establishing Collective Bargaining for Career Firefighters**, summarizes the establishment of collective bargaining for Montgomery County firefighters in Emergency Bill 48-87, including the legislative changes that prompted the bill; and
- **Section II, Establishing Binding Arbitration for Career Firefighters**, summarizes the adoption of Charter § 510A and describes the legislative history of Emergency Bill 21-96, which adopted a collective bargaining framework for professional fire and rescue employees.

I. ESTABLISHING COLLECTIVE BARGAINING FOR CAREER FIREFIGHTERS

Emergency Bill 48-87, enacted on November 24, 1986, added a third bargaining unit to the County Government's collective bargaining law. The new unit – the Fire/Rescue Unit – was made up of career firefighters below the rank of sergeant. The table below provides key dates related to Bill 48-87.

Table 7-1. Key Dates for Emergency Bill 48-87

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|---|-------------------|---------------------|---------------|
| Oct. 20, 1987 | Nov. 5, 1987 | None | Nov. 17, 1987 | Nov. 20, 1987 | Nov. 20, 1987 |
| Bill Sponsored By: | | Council President at the request of County Executive Kramer | | | |

At the request of County Executive Sidney Kramer, the Council introduced Bill 48-87 in October 1987, one week after enacting legislation that transferred employment of career firefighters from the independent fire corporations to the County merit system, with an effective date of January 1988.¹ The Council adopted legislation to transfer career firefighters from the fire corporations to the merit system to address legal concerns under the federal Fair Labor Standards Act about

¹ See 10-15-87 Council Legislative Minutes at 6383 (enacting Emergency Bill 42-87).

overtime payments to firefighters as corporation employees.² Once the firefighters became members of the merit system, those below the rank of sergeant would become members of a collective bargaining unit according to County Collective Bargaining law.³

County Executive Sidney Kramer submitted emergency legislation to the Council to establish a separate bargaining unit under the County Collective Bargaining law because “[h]istorically, firefighter/rescuers have been recognized as sharing a unique community of interest in labor relations and collective bargaining systems.”⁴ The legislation received support from several unions, including the Montgomery County Career Firefighters Association, the United Food & Commercial Workers Union Local 400, and the Fraternal Order of Police, Montgomery County Lodge 35.⁵

The Council received two drafts of the bill, the first dated October 16, 1987 (four days before the Council introduced the bill), and the second dated October 20, 1987 (the day the Council introduced the bill). On November 20th, the Council adopted the second draft, without making any further amendments.

Provisions of Bill 48-87. Bill 48-87 added a new, third collective bargaining unit to the County Collective Bargaining law.⁶ The new unit – the Fire/Rescue Unit – was made up of Master Firefighter/Rescuers and Firefighter/Rescuers I, II, and III.⁷ The bill also amended the time to file a certification petition by an employee organization seeking to represent a collective bargaining unit.⁸

Discussion of Bill 48-87. At the November 5, 1987 public hearing on Bill 48-87, the Council heard testimony from Personnel Director William Garrett and from Norman Conway, representing the Montgomery County Career Firefighters Association.⁹ Mr. Garrett’s testimony cited the following arguments in favor of establishing a separate bargaining unit for firefighters:

- “Historically, [t]he occupation of firefighter ... was the first job category to be recognized as requiring a separate bargaining unit due to the narrow and unique community of interest of firefighters;”
- Many policies, practices, and working conditions are unique to firefighters, “including scheduling, uniforms, equipment, safety, training, promotion and performance evaluation;” and
- Other than police officers, no other County occupational group was as large as firefighters – with approximately 600 employees.¹⁰

² See 8-13-87 County Legislative Minutes at p. 6326.

³ See 10-20-87 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at ©6.

⁴ Ibid.

⁵ See 11-5-87 Public Hearing Transcript at p. 11-13 (Testimony of Norman Conway, Montgomery County Career Firefighters Association); 11-5-87 Letter from Thomas McNutt (President, United Food & Commercial Workers Union Local 400); and 11-5-87 Letter from Walter Bader (President, Fraternal Order of Police, Montgomery County Lodge 35).

⁶ Final Bill 48-87, § 33-105(a).

⁷ Ibid. § 33-105(a)(3).

⁸ Ibid. § 33-106(a)(3).

⁹ 11-5-87 Public Hearing Transcript at p. 4, 11.

¹⁰ 11-5-87 Public Hearing Transcript at p. 5-6.

Mr. Garrett testified that County Executive Kramer proposed the legislation as emergency legislation to ensure that the separate bargaining unit for firefighters would exist before the firefighters transferred into the merit system in January 1988.¹¹ He also explained that any employee organization elected to represent firefighters would not begin bargaining until November 1988, with any collective bargaining agreement taking effect on July 1, 1989. Norman Conway, speaking on behalf of the Montgomery County Career Firefighters Association, also supported Bill 48-87 and urged the Council to enact the legislation.¹²

The Council met in legislative session on November 17, 1987 to enact Bill 48-87. The Council did not hold a separate worksession on Bill 48-87. The primary issue debated by the Council was whether to remove pension benefits from the scope of collective bargaining.¹³

Councilmember Hanna made a motion to amend the collective bargaining law to remove pension plans from the items that can be bargained over by firefighters.¹⁴ Addressing a question from Councilmember Potter, Senior Legislative Attorney Mike Faden explained that the manner in which the legislation was advertised to the public was broad enough to encompass removing pension plans from the scope of bargaining.¹⁵

Councilmember Leggett proposed deferring action on the bill for a week to “investigate” the proposal because “the inclusion of pensions as a negotiable item could create a heavy financial burden for the County.”¹⁶ Councilmember Adams endorsed receiving additional information on this issue if the Council did defer action. Councilmember Potter “suggested the need for a new bill to be drafted to address the pension issue since it applies to all of the collective bargaining units.”¹⁷

Sean Rogers, Chief of Labor/Employee Relations and Training, informed the Council that, by law, the police and the two County employee bargaining units already had the right to bargain over pension benefits and that Bill 48-87 was meant to make a technical amendment to the law to add the firefighter bargaining unit.¹⁸ In response, Councilmember Hanna “expressed concern about the financial impact that could be placed on the County government as a result of pension negotiations, particularly since the County has a defined benefit pension plan.”¹⁹

Council Vice President Subin recommended that the Council enact the proposed legislation but also ask the Council’s Personnel Committee to review the pension issue.²⁰ Councilmember Hanna then withdrew his motion.²¹

¹¹ 11-5-87 Public Hearing Transcript at p. 7.

¹² 11-5-87 Public Hearing Transcript at p. 11-13.

¹³ 11-17-87 Council Legislative Minutes at p. 6443-6444.

¹⁴ 11-17-87 Council Legislative Minutes at p. 6443.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.* at p. 6444.

²⁰ *Ibid.*

²¹ *Ibid.*

The Council unanimously voted (6-0) to enact Emergency Bill 48-87. Councilmembers Bruce Adams, Rose Crenca, William Hanna, Isiah Leggett, Neal Potter, and Michael Subin voted in favor of the bill; Councilmember Michael Gudis was absent.²²

II. ESTABLISHING BINDING ARBITRATION FOR CAREER FIREFIGHTERS

A. Adoption of Montgomery County Charter § 510A

In the November 8, 1994 general election, Montgomery County voters approved a ballot question to add a new section 510A to the Montgomery County Charter requiring the Council to enact a collective bargaining law for firefighters that included binding arbitration. This ballot question was sponsored by a group of Montgomery County career firefighters – The Binding Arbitration for Career Fire Fighters Committee.²³

The new section of the Charter – entitled *Collective Bargaining – Fire Fighters* – stated:

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County career fire fighters. Any law so enacted shall prohibit strikes or work stoppages by career fire fighters.²⁴

This Charter language mirrored the language in Charter § 510 governing collective bargaining for police officers. It required the Council to do two things – to provide for collective bargaining for firefighters; and to provide binding arbitration as a means of resolving collective bargaining impasses. The ballot measure also amended County Charter § 511 – governing collective bargaining for County Government employees – to remove firefighters from the group of employees covered by that section of the Charter.²⁵

B. Adoption of Separate Collective Bargaining Legislation for Firefighters

Emergency Bill 21-96, enacted on July 23, 1996, established a collective bargaining framework for professional fire and rescue employees that was separate from the sections of the law governing collective bargaining for police officers or for other County Government employees.²⁶ The table below provides key dates related to Emergency Bill 21-96.

Table 7-2. Key Dates for Emergency Bill 21-96

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|---|-------------------|---------------------|--------------|
| May 14, 1996 | July 2, 1996 | MFP Committee July 11, 1996 | July 23, 1996 | Aug. 1, 1996 | Aug. 1, 1996 |
| Bill Sponsored By: | | Council President at the request of County Executive Duncan | | | |

²² Ibid.

²³ 8-24-94 Letter from Carol Evans, Elections Administrator, Board of Supervisors of Elections, to County Executive Neal Potter.

²⁴ Council Resolution 12-1790 at p. 2.

²⁵ Ibid.

²⁶ 5-10-96 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1.

As enacted, Bill 21-96:

- Allowed a certified employee organization the exclusive right to bargain on behalf of employees for issues such as: salaries and wages, pension and retirement benefits, hours and working conditions, and the amelioration of the effect on employees when the County Government's exercise of "employer rights" causes a loss of existing jobs;
- Allowed an employee organization to bargain for an agency shop provision – which would require an employee to pay union dues or an equivalent fee to a union or, in the alternative, to a non-union, nonreligious charity;
- Allowed a neutral individual (called an "impasse neutral") to resolve – through binding arbitration – impasses in bargaining between an employee organization and the County Government; and
- Allowed the Council to approve or disapprove provisions of a collective bargaining agreement that required appropriation of funds; the enactment or adoption of County law; or which had or could have a present or future fiscal impact.

On July 23, 1996, the Council voted to enact Emergency Bill 21-96. Councilmembers Derick Berlage, Nancy Dacek, Gail Ewing, William Hanna, Neal Potter, Marilyn Praisner, and Michael Subin voted in favor of the bill. Councilmembers Betty Ann Krahnke and Isiah Leggett were absent.²⁷

1. Legislative History of Bill 21-96

County Executive Douglas Duncan consulted with the Montgomery County Career Fire Fighters Association, IAFF Local 1664 in drafting Bill 21-96. County Executive Duncan explained to the Council that he developed a separate collective bargaining law for firefighters because "collective bargaining for the Fire/Rescue bargaining unit is a hybrid of the features that are contained in the other two collective bargaining laws."²⁸ He explained:

- The scope of bargaining for firefighters was the same as for County Government employees in the OPT and SLT bargaining units; and
- The impasse resolution procedure with binding arbitration was similar to the impasse resolution procedure in the Police Labor Relations law.²⁹

The Council introduced the bill as emergency legislation on May 14, 1996 and it held a public hearing on July 2nd. At the public hearing, the Council heard testimony from James Torgesen, County Labor/Employee Relations Manager, and John Sparks, President of the Montgomery County Career Fire Fighters Association, IAFF Local 1664. The official file for Bill 21-96 contained only written testimony from Mr. Sparks and did not contain a public hearing transcript or written testimony from Mr. Torgesen.

²⁷ 7-23-96 Council Legislative Minutes at p. 25.

²⁸ 3-15-96 Memorandum from Douglas Duncan, County Executive, to Council President Gail Ewing.

²⁹ Ibid. See also 7-11-96 Memorandum from Michael Faden, Senior Legislative Attorney, to Management and Fiscal Policy Committee at p. 1 [hereinafter 7-11-96 Faden Memo"].

Mr. Sparks' written testimony indicates that he asked the Council for fair and equitable treatment "in comparison to other County public safety bargaining unit employees."³⁰ He testified that Bill 21-96 "[did] not broaden out negotiable subjects nor [did] it restrict or change any of the many current management rights."³¹

The Council's Management and Fiscal Policy (MFP) Committee held a worksession on Bill 21-96 on July 11, 1996. The MFP Committee recommended that the Council enact Bill 21-96 with amendments "jointly proposed by the Office of Human Resources and the International Association of Firefighters Local 1664, as modified by the Committee."³² The Council enacted the bill on July 23, 1996.

The official bill file for Bill 21-96 contains three drafts of the bill – the original draft transmitted by the County Executive and drafts #3 and #5. The Council introduced and the MFP Committee reviewed draft #3.³³ The Council enacted draft #5.

2. Major Legislative Issues

The official bill file contains a June 14th joint memorandum from Mr. Torgesen and Mr. Sparks outlining suggested amendments to the bill.³⁴ The Council and Committee minutes in the file do not contain any detailed Council or Committee discussion about the bill. Accordingly, this section of the report summarizes the major issues addressed in the final version of Bill 71-81 (listed below), but does not describe any discussions about those issues during the legislative process:

- Employees Represented in the Law;
- Subjects for Collective Bargaining;
- Employer Rights
- Collective Bargaining Process;
- Preemption of Laws or Regulations;
- Election of a Certified Representative;
- Labor Relations Administrator;
- Employee Rights;
- Prohibitions on Strikes and Lockouts; and
- Prohibited Practices.

³⁰ 4-2-96 Written Testimony of John J. Sparks, President, Local 1664.

³¹ Ibid.

³² 7-11-96 MFP Committee Minutes at p. 1.

³³ Council and Executive Branch staff often revise a bill prior to the Council introducing the bill – creating one or more drafts. The Council will introduce the most recent draft of a bill. Often a bill file only contains the drafts of a bill considered by the Council or by a Council Committee.

³⁴ See 6-14-96 Memorandum from James Torgesen, Labor/Employee Relations Manager, and John Sparks, President, Montgomery County Career Fire Fighters Association, IAFF Local 1664, to Michael Faden (included in 7-11-96 Faden Memo at ©34-35).

a. Employees Represented in the Law

The final version of Bill 21-96 defined an employee as:

[A]ny fire and rescue employee in the classification of Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not any employee

(A) in a probationary status, or

(B) in the classification of Fire/Rescue Lieutenant or any equivalent or higher classification.³⁵

The bill, as introduced, excluded employees in the classification of “sergeant” or higher.³⁶ Mr. Torgesen and Mr. Sparks recommended changing the reference from “sergeant” to “lieutenant” because the County Government was going to abolish the classification of Fire/Rescue Sergeant in July 1996 and “all personnel in that classification will become Fire/Rescue Lieutenants.”³⁷ The Council made this change in the final bill.

b. Subjects for Collective Bargaining

The final version of Bill 21-96 identified seven topics over which a certified representative and the County Executive had a duty to collectively bargain. Bill 21-96 included the same topics for collective bargaining as the County Collective Bargaining law.³⁸ They were:

1. Salary and wages, including the percentage of the increase in the salary and wages budget that is devoted to merit increments and cash awards, but salaries and wages must be uniform for all employees in the same classification;
2. Pension and other retirement benefits for active employees only;
3. Employee benefits such as, but not limited to, insurance, leave, holidays, and vacations;
4. Hours and working conditions;
5. Procedures for the orderly processing and settlement of grievances concerning the interpretation and implementation of any collective bargaining agreement, which may include:
 - Binding third party arbitration, but the arbitrator has no authority to amend, add to, or subtract from any provision of the collective bargaining agreement; and
 - Provisions for exclusivity of forum;
6. Matters affecting the health and safety of employees; and
7. Amelioration of the effect on employees when the exercise of employer rights ... causes a loss of existing jobs in the unit.³⁹

³⁵ Final Bill 21-96, § 33-148(4).

³⁶ See 5-10-96 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at ©6.

³⁷ 7-11-96 Faden Memo at ©34.

³⁸ See Final Bill 19-86 § 33-107(a).

³⁹ Final Bill 21-96, § 33-152(a).

c. Employer Rights

The final version of Bill 21-96 identified 19 “employer rights” that were not subject to collective bargaining and that could not be impaired by a collective bargaining agreement.⁴⁰ Bill 21-96 included the same “employer rights” as the County Collective Bargaining law.⁴¹ Table 7-3 lists these “employer rights.”

Table 7-3. Employer Rights in Bill 21-96

| It is the right and responsibility of the employer to... |
|---|
| <ul style="list-style-type: none"> • Determine the overall budget and mission of the employer and any agency of County government; • Maintain and improve the efficiency and effectiveness of operations; • Determine the services to be rendered and the operations to be performed; • Determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are conducted, and the location of facilities; • Direct and supervise employees; • Hire, select, and establish the standards governing promotion of employees, and classify positions; • Relieve employees from duties because of lack of work or funds, or when the employer determines continued work would be inefficient or nonproductive; • Take actions to carry out the mission of government in emergency situations; • Transfer, assign, and schedule employees; • Determine the size, grades, and composition of the work force; • Set the standards of productivity and technology; • Establish employee performance standards and evaluate employees, but evaluation procedures are subject to bargaining; • Make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards; • Introduce new or improved technology, research, development, and services; • Control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsections (a)(6) of this section [regarding matters affecting the health and safety of employees]; • Maintain internal security standards; • Create, alter, combine, contract out, or abolish any job classification, department, operation, unit or other division or service, but the employer must not contract work which will displace employees unless it gives written notice to the certified representative 90 days before signing the contract or other notice agreed by the parties; • Suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter section 404, any such action may be subject to the grievance procedure included in a collective bargaining agreement; and • Issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this Article, Federal or State law, or the terms of a collective bargaining agreement. |

Source: Final Bill 21-96, § 33-152(b)

⁴⁰ Final Bill 21-96, § 33-152(b), (c).

⁴¹ See Final Bill 19-86 § 33-107(b).

d. Collective Bargaining Process

Bill 21-96 (in Section 33-153), as enacted by the Council, established the comprehensive collective bargaining process. This included:

- The timeline for collective bargaining;
- The process for resolving collective bargaining impasses; and
- The Council’s role in approving or disapproving portions of a collective bargaining agreement through the budget or legislative process.⁴²

This section of the report describes the Council’s review and decisions on these three aspects of the collective bargaining process.

Timeline for Collective Bargaining. The first part of § 33-153 established, among other things, the timing of the collective bargaining process.⁴³ Table 7-4 summarizes the key dates in the final version of the bill. These dates are the same dates in the Police Labor Relations law and the County Collective Bargaining law.

Table 7-4. Summary of Key Dates in the Collective Bargaining Process

| Collective Bargaining Step | Date by Which Action Required |
|---|---|
| Parties commence collective bargaining | November 1 |
| Parties choose an Impasse Neutral | November 10 |
| Conclude collective bargaining | January 15 |
| Resolution of collective bargaining impasse | February 1 (unless extended by written agreement of the parties) |

Source: Final Bill 21-96, § 33-153(a),(d), (i)

Impasse Resolution Process – Binding Arbitration. Section 33-153 also established the binding arbitration procedures that the parties would use to resolve collective bargaining impasses. This process mirrors the binding arbitration process in the Police Labor Relations law. The section of the bill on impasse procedures:

- Established the position of an “Impasse Neutral” – a contract employee responsible for mediating and arbitrating collective bargaining disputes between an employee organization and the County Government;
- Established a calendar for resolving collective bargaining impasses;
- Required the Impasse Neutral to try to broker an agreement through mediation if an impasse existed between the parties;

⁴² Final Bill 21-96, § 33-153.

⁴³ See Final Bill 21-96, § 33-153(a)-(d).

- Gave the Impasse Neutral the power to choose between competing “final offers” of the parties if mediation was unsuccessful; and
- Established factors the Impasse Neutral must consider when picking a “final offer.”⁴⁴

Table 7-5 summarizes key dates established in this section of the bill.

Table 7-5. Summary of Key Dates in the Impasse Resolution Procedure

| Impasse Procedure Step | Date by Which Action Required |
|--|-------------------------------|
| Parties choose an Impasse Neutral | November 10 |
| Impasse deemed to exist if parties have not reached an agreement | January 15 |
| Impasse Neutral must select the “more reasonable” final offer from the final offers submitted by the parties | February 1 |

Source: Final Bill 21-96, § 33-153(d)-(i)

The impasse procedure established in Bill 21-96 required the parties to choose an Impasse Neutral – either through agreement or through a process of the American Arbitration Association – before November 10th in any year in which the parties engaged in collective bargaining.⁴⁵ The legislation provided that the parties split any fees or costs associated with hiring an Impasse Neutral.⁴⁶

In the collective bargaining process, either party could declare an impasse at any time or, if the parties did not reach an agreement by January 15th, the law deemed an impasse to exist.⁴⁷ The law required the Impasse Neutral to try to mediate impasses as a first step.⁴⁸

If the Impasse Neutral decided that a “bona fide” impasse existed, the law established an arbitration process for the Impasse Neutral to use to resolve the impasse.⁴⁹ This process included the following steps:

- **Submission of agreed-upon items and “final offers.”** The Impasse Neutral could require the parties jointly to submit a list of all items agreed to by the parties and each party individually to submit a “final offer consisting of proposals not agreed upon.” Neither party could change any “final offer,” “except to withdraw a proposal on which the parties [had] agreed.”⁵⁰

⁴⁴ See Final Bill 21-96, § 33-153(d)-(i).

⁴⁵ Final Bill 21-96, § 33-153(d).

⁴⁶ Final Bill 21-96, § 33-153(d).

⁴⁷ Final Bill 21-96, § 33-153(e).

⁴⁸ Final Bill 21-96, § 33-153(f).

⁴⁹ Final Bill 21-96, § 33-153(g)-(k).

⁵⁰ Final Bill 21-96, § 33-153(g).

- **Submission of evidence.** At the Impasse Neutral’s discretion, the Impasse Neutral could require the parties to submit evidence or make arguments in support of their proposal. The Impasse Neutral could hold a hearing for this purpose that was not open to the public.⁵¹
- **Selection of “more reasonable” final offer.** On or before February 1st, the Impasse Neutral was required to select “the more reasonable” final offer submitted by the parties, based only on criteria established in the law.⁵²
- **Basis for selection of final offer.** The Impasse Neutral was required to base the selection of the final offer on the offer’s contents, including any previously agreed-upon items. The Impasse Neutral could not “consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the impasse neutral, or any other information concerning the collective bargaining leading to impasse.”⁵³
- **No changes to chosen final offer.** When choosing “the more reasonable” final offer, the Impasse Neutral was required to select the whole offer of a party and could not make any changes to the offer.⁵⁴
- **Final offer becomes agreement between the parties.** The final offer selected by the Impasse Neutral, plus all previously agreed-upon items identified by the parties, represented the final agreement between the parties. The parties were required to execute this agreement.⁵⁵

Table 7-6 identifies the exclusive set of factors on which the Impasse Neutral could base the selection of the “more reasonable” final offer. These factors are the same factors identified in the Police Labor Relations law and County Collective Bargaining law.

Table 7-6. Factors on Which Impasse Neutral Must Base Selection of “Final Offer”

| Factors on Which the Impasse Neutral Can Base the Selection of a Final Offer |
|---|
| Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions. |
| Wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland. |
| Wages, hours, benefits, and conditions of employment of other Montgomery County employees. |
| Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County. |
| The interest and welfare of the public. |
| The ability of the employer to finance economic adjustments, and the effect of those adjustments on the normal standard of public services provided by the employer. |

Source: Final Bill 21-96, § 33-153(i)(1)-(6)

⁵¹ Final Bill 21-96, § 33-153(h).

⁵² Final Bill 21-96, § 33-153(i).

⁵³ Final Bill 21-96, § 33-153(j)

⁵⁴ Final Bill 21-96, § 33-153(j)

⁵⁵ Final Bill 21-96, § 33-153(k).

Council Role in the Collective Bargaining Process. Section 33-153 of Bill 21-96 established a process similar to the process in the Police Labor Relations law for the Council to approve or disapprove portions of a collective bargaining agreement through the budget or legislative process.⁵⁶ The bill required the County Executive to submit an annual operating budget to the Council that “incude[d] sufficient funds to pay for the items in the parties’ final agreement.”⁵⁷ The bill required the County Executive to:

[E]xpressly identify to the Council all terms and conditions in the agreement that:

- (1) require an appropriation of funds, or
- (2) are inconsistent with any County law or regulation, or
- (3) require the enactment or adoption of any County law or regulation, or
- (4) which have or may have a present or future fiscal impact.⁵⁸

The final version of Bill 21-96 was amended from an earlier version to require the *County Executive* to identify the above items in the bill. The earlier version of the bill allowed “either or both parties” to identify these terms and conditions for the Council.⁵⁹ This change differentiated Bill 21-96 from the County Collective Bargaining law, which, as originally enacted, allowed “either or both parties” to identify these terms and conditions for the Council.⁶⁰ Like the Police Labor Relations law and the County Collective Bargaining law, Bill 21-96 required the County Executive to “make a good faith effort to have the Council take action to implement all terms and conditions in the parties’ final agreement.”⁶¹

Bill 21-96 allowed the Council to hold a public hearing “to enable the parties and the public to testify on the agreement.”⁶² Like the Police Labor Relations law and the County Collective Bargaining law, Bill 21-96 explicitly gave the Council the power to accept or reject terms of a collective bargaining agreement.⁶³ Bill 21-96 stated:

The Council may accept or reject all or part of any term or condition in the agreement which:

- (1) requires an appropriation of funds, or
- (2) is inconsistent with any County law or regulation, or
- (3) requires the enactment or adoption of any County law or regulation, or
- (4) which has or may have a present or future fiscal impact.⁶⁴

Bill 21-96 required the Council by May 1st to indicate its intention to “to appropriate funds for or otherwise implement the agreement” or to indicate its intention not to do so in a Council resolution.⁶⁵ The Council was required to “state its reasons for any intention to reject any part of the parties’ final agreement.”⁶⁶

⁵⁶ See Final Bill 21-96, § 33-153(l)-(p).

⁵⁷ Final Bill 21-96, § 33-153(l).

⁵⁸ Final Bill 21-96, § 33-153(l).

⁵⁹ See Final Bill 21-96, § 33-153(l).

⁶⁰ See Final Bill 19-86, § 33-108(g).

⁶¹ Final Bill 21-96, § 33-153(l).

⁶² Final Bill 21-96, § 33-153(m).

⁶³ See Final Bill 21-96, § 33-153(n).

⁶⁴ See Final Bill 21-96, § 33-153(n).

⁶⁵ Final Bill 21-96, § 33-153(n).

⁶⁶ Final Bill 21-96, § 33-153(n).

As in the Police Labor Relations law and the County Collective Bargaining law, if the Council intended to reject any portion of a collective bargaining agreement, the law required the Council to appoint a representative to convey the Council's views to the parties in subsequent negotiations.⁶⁷ The parties were required to meet "as promptly as possible" in order to "negotiate an agreement acceptable to the Council."⁶⁸ The parties could submit any impasses reached during this negotiation to the Impasse Neutral for binding arbitration.⁶⁹ The parties had to submit "the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10."⁷⁰

The bill required the Council to consider the new agreement and indicate "its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so" in a second resolution.⁷¹ The Council amended Bill 21-96 from the draft originally introduced to add the requirement that the Council pass *a second resolution* if the parties had to renegotiate and resubmit any portion of the agreement previously rejected by the Council.⁷²

Finally, like the Police Labor Relations law and the County Collective Bargaining law, Bill 21-96 required any collective bargaining agreement to:

[P]rovide for automatic reduction or elimination of wage or benefits adjustments if:

- (1) the Council does not take action necessary to implement the agreement or a part of it; or
- (2) sufficient funds are not appropriated for any fiscal year when the agreement is in effect.⁷³

e. Preemption of Laws or Regulations

The final version of Bill 21-96 contained language that described the relationship between collective bargaining agreements and previously enacted laws, regulations, and executive orders.⁷⁴ The final version of the bill allowed a collective bargaining agreement to supersede or modify a County order, rule, or regulation only if the County Executive explicitly identified the inconsistent terms to the Council, as required in § 33-153(l), described above on page 125, *and* "the Council did not reject the inconsistent term or condition of the collective bargaining agreement under Section 33-153(n)"⁷⁵

This section of the final bill stated, in part:

- (b) Any executive order, rule, or regulation of the County or any County department or agency which regulates any subject that is bargainable under this Article is not superseded or modified by a collective bargaining agreement negotiated under this Article, except to the extent that the application of the order, rule, or regulation is inconsistent with the collective bargaining agreement.

⁶⁷ Final Bill 21-96, § 33-153(o).

⁶⁸ Final Bill 21-96, § 33-153(o).

⁶⁹ Final Bill 21-96, § 33-153(o).

⁷⁰ Final Bill 21-96, § 33-153(o).

⁷¹ Final Bill 21-96, § 33-153(o).

⁷² See Final Bill 21-96, § 33-153(o).

⁷³ Final Bill 21-96, § 33-153(p).

⁷⁴ Final Bill 21-96, § 33-157(a)-(c).

⁷⁵ Final Bill 21-96, § 33-157(c).

- (c) However, if the inconsistent order, rule, or regulation is subject to and has received County Council approval, a collective bargaining agreement does not supersede or modify it unless:
- (1) the order, rule, or regulation was expressly identified to the Council by the parties before the Council reviewed the collective bargaining agreement, as required by Section 33-153(l), and the Council did not reject the inconsistent term or condition of the collective bargaining agreement under Section 33-153(n); or
 - (2) the Council repeals or modifies the order, rule, or regulation.⁷⁶

f. Election of a Certified Representative

As enacted by the Council, Bill 21-96 established an election process for certifying or decertifying an employee organization as the employees' collective bargaining representative.⁷⁷ This process mirrored the processes established by the Police Labor Relations law and the County Collective Bargaining law.

Under Bill 21-96, a Labor Relations Administrator received petitions for certification and decertification of employee organizations and supervised elections.⁷⁸ The bill required an employee organization to receive a majority of votes cast by employees in order to become the employees' certified representative.⁷⁹

An employee organization could appear on an election ballot to become the employees' certified collective bargaining representative in one of two ways:

- The employee organization could file a petition with the Labor Relations Administrator containing the signatures of 30 percent of the employees in a unit indicating the employees' desire for collective bargaining representation by the employee organization;⁸⁰ or
- If an employee organization has already filed a valid petition, any other employee organization could provide written proof of support from at least ten percent of the employees in the unit to the Labor Relations Administrator.⁸¹

All election ballots also had to offer the choice that an employee did not want to be represented by any employee organization.⁸²

⁷⁶ Final Bill 21-96, § 33-157(b), (c).

⁷⁷ See Final Bill 21-96, § 33-151.

⁷⁸ Final Bill 21-96, § 33-151(a)-(e).

⁷⁹ Final Bill 21-96, § 33-151(e)(6).

⁸⁰ Final Bill 21-96, § 33-151(a).

⁸¹ Final Bill 21-96, § 33-151(e)(2).

⁸² Final Bill 21-96, § 33-151(e)(2).

g. Labor Relations Administrator

As adopted by the Council, the final version of Bill 21-96 created a position of Labor Relations Administrator (LRA) to implement and administer the sections of the law addressing the selection and certification of employee organizations and prohibited practices.⁸³ The LRA in this bill mirrored the position of Permanent Umpire under the Police Labor Relations law and the Labor Relations Administrator under the County Collective Bargaining law.

Under Bill 21-96, the Labor Relations Administrator's duties included:

- Creating regulations under method (1) and procedures to implement and administer the sections of the law overseen by the Labor Relations Administrator;
- Requesting needed assistance, service, and data from the County Executive and an employee organization;
- Holding hearings;
- Conducting elections for the certification or decertification of employee organizations and issuing the certification or decertification;
- Investigating and resolving allegations of prohibited practices, deferring to negotiated grievance procedures if "deferral to the grievance procedure would not result in the application of principles repugnant to this Article;"
- Determining "whether a person is properly included in or excluded from the unit;"
- Obtaining support and expending funds allocated in the County budget as necessary; and
- Exercising other powers and performing other duties as specified in the law.⁸⁴

Under the final version of the bill, the County Executive appointed a Labor Relations Administrator to a five-year term, picking from a list of five individuals agreed upon by the certified representative and the Chief Administrative Officer.⁸⁵ The Council had to confirm the County Executive's choice.⁸⁶ If the Council did not confirm the County Executive's choice, the County Executive had to appoint and seek Council confirmation for a different person chosen from a new list of five individuals agreed to by the certified representative and the Chief Administrative Officer.⁸⁷

This section of Bill 21-96 differed from the corresponding sections of the Police Labor Relations law and the County Collective Bargaining law with respect to the process for appointing the second and subsequent Labor Relations Administrators. In Bill 21-96, an incumbent Labor Relations Administrator was "automatically reappointed for another 5-year term unless, during the period between 60 and 30 days before the term expires, the certified representative notifies the employer

⁸³ Final Bill 21-96, § 33-149(a).

⁸⁴ Final Bill 21-96, § 33-149(a).

⁸⁵ Final Bill 21-96, § 33-149(c).

⁸⁶ Final Bill 21-96, § 33-149(c).

⁸⁷ Final Bill 21-96, § 33-149(c).

or the employer notifies the certified representative that it objects to the reappointment.”⁸⁸ Under the Police Labor Relations law and the County Collective Bargaining law as originally passed, the parties and the Council had to repeat the process of choosing and confirming a Labor Relations Administrator or a Permanent Umpire after the prior one’s term expired.⁸⁹

h. Employee Rights

As adopted by the Council, the final version of Bill 21-96 established a set of employee rights under the collective bargaining process.⁹⁰ It also outlined certain rights and/or duties of the employee and a certified representative. This section of the law mirrored the corresponding section in the County Collective Bargaining law.

Table 7-7 summarizes these rights and duties.

Table 7-7. Summary of Rights and Duties in the Firefighters Collective Bargaining Bill

| Employee Rights | Certified Representative Duties | Employer Duties |
|--|---|---|
| <ul style="list-style-type: none"> • To form, join, support, contribute to, or participate in an employee organization or its lawful activities. • To refrain from forming, joining, supporting, contributing to, or participating in an employee organization or its lawful activities. • To be fairly represented by a certified representative, if any. | <ul style="list-style-type: none"> • To serve as the exclusive bargaining agent for all employees in the unit for which it is certified. • To represent fairly and without discrimination all employees in the unit without regard to whether the employees are members of the employee organization, pay dues or other contributions to it, or participate in its affairs (seeking to enforce a valid agency shop provision does not violate this duty). | <ul style="list-style-type: none"> • To extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties. |
| Right of Certified Representative | | |
| <ul style="list-style-type: none"> • The right of a certified representative to receive voluntary dues or service fee deductions or agency shop provisions must be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this article. Other than an agency shop provision, a collective bargaining agreement must not require membership in, participation in the affairs of, or contributions to an employee organization. | | |

Source: Final Bill 21-96, § 33-150

⁸⁸ Final Bill 21-96, § 33-149(c).

⁸⁹ See Final Bill 71-81, § 33-77(b), (c); Final Bill 19-86, § 33-103(b).

⁹⁰ Final Bill 21-96, § 33-150(a).

Agency Shop Provisions. As in the Police Labor Relations law and the County Collective Bargaining law, a certified representative had the right to negotiate for an “agency shop” provision in a collective bargaining agreement under Bill 21-96.⁹¹ As defined in Bill 21-96, an “agency shop” provision refers to a provision in a collective bargaining agreement:

[R]equiring as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members.⁹²

The definition, however, contained some limitations on agency shop provisions:

An agency shop agreement must not require an employee to pay initiation fees, assessments, fines, or any similar collections as a condition of continued employment. A collective bargaining agreement must not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative must adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.⁹³

i. Prohibition on Strikes and Lockouts

County Charter § 510A required any collective bargaining law to prohibit strikes or work stoppages by career firefighters.⁹⁴ The prohibitions and consequences enacted by the Council in this section of Bill 21-96 mirrored the language in the Police Labor Relations law and County Collective Bargaining law. Bill 21-96, as enacted by the Council, prohibited employees and employee organizations from striking and prohibited the County Government from locking out employees.⁹⁵

Like the Police Labor Relations law and County Collective Bargaining law, Bill 21-96 also prohibited the County Executive from paying any employee for a period when the employee was engaged in a strike.⁹⁶ The final bill also gave the Labor Relations Administrator authority to investigate and hold hearings on alleged violations of this portion of the law.⁹⁷ If the Labor Relations Administrator found that a violation occurred, the County Executive could:

- Impose disciplinary action, including dismissal from employment, on employees engaged in prohibited conduct;
- Terminate or suspend an employee organization’s dues deduction privilege; and
- Revoke the certification of an employee organization and disqualify it from elections for up to two years.⁹⁸

⁹¹ Final Bill 21-96, § 33-150(d).

⁹² Final Bill 21-96, § 33-148(1).

⁹³ Final Bill 21-96, § 33-148(1).

⁹⁴ Charter of Montgomery County, Maryland, § 510A, adopted November 8, 1994.

⁹⁵ Final Bill 21-96, § 33-156(a).

⁹⁶ Final Bill 21-96, § 33-156(b).

⁹⁷ Final Bill 21-96, § 33-156(c).

⁹⁸ Final Bill 21-96, § 33-156(c).

j. Prohibited Practices

The final version of Bill 21-96 outlined a list of “prohibited practices” for both the employer and an employee organization.⁹⁹ In the bill, the Labor Relations Administrator was given responsibility for investigating, holding hearings on, determining the validity of, ordering parties to stop, and crafting remedies for prohibited practices.¹⁰⁰

The law included the following examples of remedies to prohibited practices:

- Reinstating employees with or without back pay;
- Making employees whole for any losses relating to County employment suffered as a result of any prohibited practice; and
- Withdrawing or suspending an employee organization’s authority to negotiate or continue an agency shop provision or a voluntary dues or service fee deduction provision.¹⁰¹

Table 7-8. Summary of Prohibited Practices in Bill 21-96

| The Employer must not ... | Employee Organizations must not... |
|---|---|
| <ul style="list-style-type: none"> • Interfere with, restrain or coerce employees in the exercise of any rights granted to them under this collective bargaining law. • Dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it (excluding voluntary dues or service fee deductions, an agency shop provision, and reasonable use of County facilities to communicate with employees). • Encourage or discourage membership in any employee organization by discriminating in hiring, tenure, wages, hours, or conditions of employment. • Discharge or discriminate against a public employee because the employee files charges, gives testimony, or otherwise lawfully aides in administering the collective bargaining law. • Refuse to bargain collectively with the certified representative. • Refuse to reduce to writing or sign a bargaining agreement that has been agreed to in all respects. • Refuse to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement. • Directly or indirectly oppose the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached under this collective bargaining law. • Engage in a lockout of employees. | <ul style="list-style-type: none"> • Interfere with, restrain or coerce the employer or any employee in the exercise of any rights granted under this collective bargaining law. • Restrain, coerce or interfere with the employer in the selection of its representatives for collective bargaining or the adjustment of grievances. • Refuse to bargain collectively with the employer if an employee organization is the certified representative. • Refuse to reduce to writing or sign a collective bargaining agreement that has been agreed to in all respects. • Hinder or prevent, by threats of violence, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstruct or otherwise unlawfully interfere with the entrance to or exit from any place of employment, or obstruct or unlawfully interfere with any person’s free and uninterrupted use of any road, railway, airport, or other mode of travel. • Hinder or prevent by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, supplies, equipment or services by the employer. • Take or retain unauthorized possession of property of the employer, or refuse to do work or use certain goods or materials as lawfully required by the employer. • Cause or attempt to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed. |

Source: Final Bill 21-96, § 33-154(a), (b)

⁹⁹ Final Bill 21-96, § 33-154(a), (b).

¹⁰⁰ Final Bill 21-96, § 33-154(c)-(f).

¹⁰¹ Final Bill 21-96, § 33-154(e).

CHAPTER VIII. Bills Adding Groups of Employees to Collective Bargaining Units

This chapter describes four bills that added collective bargaining rights for groups of County Government employees not included in the laws when they were originally enacted. This chapter is organized as follows:

- Section I, Adding Police Sergeants to the Police Bargaining Unit – Bill 10-00;
- Section II, Adding Lieutenants and Captains to the Fire and Rescue Bargaining Unit – Bill 13-01;
- Section III, Adding Other Groups of Employees to the County Government Collective Bargaining Units – Bill 9-01; and
- Section IV, Adding Department of Correction and Rehabilitation Sergeants to the County Government Office, Professional, and Technical Bargaining Unit – Expedited Bill 11-05.

I. ADDING POLICE SERGEANTS TO THE POLICE BARGAINING UNIT – BILL 10-00

Bill 10-00, enacted by the Council on June 6, 2000, added police sergeants to the police collective bargaining unit. This section summarizes the history of the bill and is organized as follows:

- **Section A, Legislative History of Bill 10-00**, summarizes the legislative history of Bill 10-00;
- **Section B, Major Legislative Issues**, reviews the primary issues discussed during the legislative process leading up to the adoption of Bill 10-00; and
- **Section C, Final Bill**, describes the final bill, as enacted by the Council.

The table below provides key dates related to Bill 10-00.

Table 8-1. Key Dates for Bill 10-00

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--|-------------------|---------------------|----------------|
| March 14, 2000 | April 4, 2000 | MFP Committee April 11, 2000 June 5, 2000 | June 6, 2000 | June 19, 2000 | Sept. 18, 2000 |
| Bill Sponsored By: | | Councilmembers Berlage, Andrews, Leggett, Silverman, and Blair Ewing | | | |

A. Legislative History of Bill 10-00

The Council introduced bill 10-00 on March 14, 2000. The bill was originally sponsored by Councilmembers Berlage, Andrews, and Silverman; at introduction, Councilmembers Blair Ewing and Leggett also signed on as sponsors.¹ As introduced, Bill 10-00 proposed two changes to the Police Labor Relations law. Specifically, it proposed to:

- Extend collective bargaining rights to police sergeants; and
- Add a second, separate bargaining unit to the law for police sergeants.²

As introduced, Bill 10-00 provided that police sergeants would bargain with management separately from the other police officers included in the law.

County Executive Douglas Duncan informed the Council that he supported “extend[ing] collective bargaining rights to police sergeants.”³ He also suggested some amendments to the bill, discussed below beginning on page 134. Before the bill’s introduction, Walter Bader, President of the Fraternal Order of Police, Montgomery County Lodge 35, expressed the FOP’s support for the bill and suggested amendments to the bill, also discussed below.⁴

Police Chief Charles Moose, Walter Bader, and three police sergeants testified at the April 4, 2000 public hearing on Bill 10-00. The official bill file contains the written testimony of Mr. Bader and the police sergeants, but not of Chief Moose. Mr. Bader, Sergeant Kirk Holub, Sergeant Fergus Sugrue, and Sergeant Russell Hamill testified in support of Bill 10-00 with the FOP’s suggested amendments to the bill.⁵

Following the public hearing, the Management and Fiscal Policy (MFP) Committee held two worksession on Bill 10-00 – in April and June, 2000. The full Council reviewed and discussed the bill in two separate legislative sessions – on May 2 and June 6, 2000. The official bill file for Bill 10-00 contains four drafts of the bill: Draft #1 – introduced by the Council; Draft #2 – reviewed in the MFP Committee’s June 5, 2000 worksession and including prior MFP Committee amendments; Draft #4 – also reviewed in the MFP Committee’s June 5, 2000 worksession and incorporating all Councilmember-proposed amendments; and Draft #6 – enacted by the Council.

The Council enacted Bill 10-00 on June 6, 2000. Councilmembers Andrews, Berlage, Leggett, Silverman, Denis, and Blair Ewing voted in favor of the Bill; Councilmember Praisner abstained, Councilmember Subin voted against the bill, and Councilmember Dacek was absent.

¹ 3-9-00 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1, 2-29-00 Letter from Walter Bader, President of the Fraternal Order of Police, Montgomery County Lodge 35 to Councilmember Subin at p. 1 [hereinafter “2-29-00 Bader Letter”].

² Bill 10-00 Draft #1, §§ 33-76, 33-78A.

³ 4-3-00 Memorandum from County Executive Douglas Duncan to Council President Michael Subin at p. 1 [hereinafter “4-3-00 Duncan Memo”].

⁴ 2-29-00 Bader Letter at p. 1.

⁵ See April 4, 2000 Written Testimony of Walter Bader, Sergeant Kirk Holub, Sergeant Fergus Sugrue, and Sergeant Russell Hamill.

B. Major Legislative Issues

The MFP Committee and the Council discussed and considered several amendments to Bill 10-00. County Executive Duncan proposed three primary amendments to the bill:

- One amendment added a separate collective bargaining unit for police lieutenants and captains – in addition to police sergeants – to the Police Labor Relations law;
- One amendment prohibited police lieutenants or captains from collective bargaining if they were assigned to work units and their primary duties involved human resources, internal affairs, legal, labor relations, or policy development and compliance; and
- One amendment prohibited the police supervisors' collective bargaining unit from bargaining over "the effect of the employer's exercise of employer rights" – the "effects bargaining" right enjoyed by police non-supervisors.⁶

Before the Council introduced Bill 10-00, the FOP also suggested a number of amendments to the bill. The FOP recommended including sergeants in the existing police bargaining unit instead of creating a second bargaining unit just for sergeants.⁷ According to Walter Bader, FOP Lodge 35 President, "a separate bargaining unit for this rank will just complicate the bargaining and personnel management process in the Department."⁸ The FOP also suggested amendments to the bill that would allow the incumbent certified representative – the FOP – to represent sergeants without an election if a majority of sergeants provided evidence to the Permanent Umpire that they wanted to be represented by the incumbent representative.⁹

The rest of this section summarizes the discussion and debate over the following two issues:

- The number of police bargaining units, including whether to include lieutenants and captains, and
- Whether to limit "effects bargaining" to non-supervisory police officers.

1. Number of Police Bargaining Units

County Labor/Employee Relations Manager James Torgesen sent a memorandum to Senior Legislative Attorney Michael Faden before the Management and Fiscal Policy Committee's first worksession on Bill 10-00.¹⁰ The memo outlined the Executive Branch's reasoning behind County Executive Duncan's proposed amendments to the bill (listed above).

⁶ 4-3-00 Duncan Memo at p. 3-5.

⁷ 2-29-00 Bader Letter at p. 1.

⁸ Ibid.

⁹ Ibid. at p. 3.

¹⁰ See 6-5-00 Memorandum from Michael Faden, Senior Legislative Attorney, to the Management and Fiscal Policy Committee at ©23 [hereinafter "6-5-00 Faden Memo"].

FOP Lodge 35 sent the Council correspondence that urged the inclusion of sergeants in the same bargaining unit as non-supervisory police officers “subject to a vote by sergeants to determine if they want to be represented.”¹¹ In this letter, the FOP outlined counter-arguments to several assertions in Mr. Torgesen’s April 7, 2000 memo.¹² In particular, Messrs. Bader and Holub asserted that “[p]olitics, not facts, are the driving force behind the Executive’s proposal” to have separate bargaining units for supervisors and non-supervisors.¹³

The Alliance of Police Supervisors sent the Council correspondence that supported legislation to include collective bargaining for police sergeants, lieutenants, and captains.¹⁴ Alliance President Drew Tracy stated that “[i]t is important that management have a voice in their future.”¹⁵

Councilmember Berlage sent a memorandum to Councilmember Andrews (who was Lead Councilmember for Personnel Matters on the MFP Committee), dated April 5th, that proposed a number of amendments to Bill 10-00. In particular, Mr. Berlage’s amendments proposed: establishing a separate bargaining unit for police lieutenants and captains; including sergeants in the bargaining unit with non-supervisory officers; and rejecting the County Executive’s proposed amendments.¹⁶

The Management and Fiscal Policy Committee held its first worksession on Bill 10-00 on April 11, 2000. At the April 11th MFP Committee worksession, Councilmembers Praisner, Andrews, and Krahnke discussed the scope of the collective bargaining unit.¹⁷ At the outset, Councilmember Praisner expressed concern based on indications from Councilmembers Berlage and Silverman that they would propose amendments to Bill 10-00 when it was before the Council, but did not make the proposed amendments available to the Committee.¹⁸

Note: The bill file did not contain the packet by Michael Faden, Senior Legislative Attorney, for this worksession. Further, there is no indication in the documents in the bill file why the Committee did not have a copy of Councilmember Berlage’s proposed amendments.

At the April 11th worksession, Councilmember Andrews spoke in favor of creating a separate bargaining unit for supervisors and supported extending collective bargaining rights to sergeants, lieutenants and captains.¹⁹ Councilmember Krahnke opposed enactment of the bill, but indicated her support for including sergeants in a broader “supervisors” unit, if one was created.²⁰ Councilmember Praisner reserved judgment on the issue. The Committee minutes indicate that the Committee agreed to support an amendment that excluded police lieutenants and captains from a collective bargaining unit if they work in human resources, internal affairs, legal, labor relations, or policy development and compliance.²¹

¹¹ See 4-27-00 Letter from FOP Lodge 35 President Walter Bader and FOP Supervisors Committee Chair Kirk Holub to Council President Subin [hereinafter “4-27-00 Bader/Holub Letter”]. The FOP Supervisors Committee was created in 1982 and all of its members were Montgomery County police sergeants.

¹² 4-27-00 Bader/Holub Letter at p. 2-5.

¹³ *Ibid.* at p. 4.

¹⁴ 3-16-00 Letter from Alliance of Police Supervisors President Drew Tracy to Councilmember Berlage (included in 6-5-00 Faden Memo at ©22).

¹⁵ *Ibid.*

¹⁶ 6-5-00 Faden Memo at ©28.

¹⁷ 4-11-00 MFP Committee Minutes at p. 1-2.

¹⁸ *Ibid.* at p. 1.

¹⁹ *Ibid.*

²⁰ *Ibid.* at p. 1-2.

²¹ *Ibid.* at p. 2.

The Council addressed Bill 10-00 in its legislative session on May 2, 2000. Councilmember Praisner reiterated her concern that Councilmembers did not make their amendments available to the MFP Committee for review.²² Councilmember Silverman acknowledged Councilmember Praisner's point, but indicated "his amendment was not available at that time."²³ Councilmember Silverman then proposed the following amendment:

Section 2. If, during the first 90 days after this Act becomes law, the permanent umpire appointed under Section 33-77 finds that a majority of all sergeants then employed by the Police Department have authorized the certified representative of the police bargaining unit to represent them, then this Act takes effect on October 1, 2000. If the permanent umpire does not so find during the specified time period, then this Act does not take effect.²⁴

Councilmember Silverman explained that his primary focus was "to create one bargaining unit," which "would avoid potential inconsistencies in arbitration decisions; create a more effective and efficient uniform mechanism for both the employer and employee, and would be based on the experience of other jurisdictions."²⁵

Councilmember Dacek indicated that she had not supported collective bargaining rights for police sergeants in the past because she considered them a part of police management.²⁶ Councilmember Dacek acknowledged that police sergeants have indicated that they are not treated as part of the supervisory structure, and the bill is an attempt to address some of these issues.²⁷ Councilmember Dacek indicated that her preference was to include police sergeants in a separate bargaining unit.²⁸

Police Chief Charles Moose urged the Council to support County Executive Duncan's amendment to include police sergeants, lieutenants, and captains in a separate bargaining unit.²⁹ Councilmember Berlage explained that his rationale for sponsoring Bill 10-00 in the first place was his belief that sergeants should have collective bargaining rights.³⁰ He explained that "[s]ergeants do not control the work place in the same way that managers do, and they have not been able to exercise their influence over wages and conditions."³¹

Councilmember Berlage expressed support for County Executive Duncan's proposal to include lieutenants and captains in the bill but in a separate bargaining unit.³² He also expressed support for Councilmember Silverman's proposed amendment.³³

²² 5-2-00 Council Legislative Minutes at p. 7.

²³ Ibid. at p. 7.

²⁴ Ibid. at p. 7.

²⁵ 5-2-00 Council Legislative Minutes at p. 7.

²⁶ Ibid. at p. 8.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

At the end of the legislative session, the Council did not vote on Councilmember Silverman's proposed amendment and Council President Subin returned the bill to the MFP Committee "to address issues raised" in the Council session.³⁴

On June 5, 2000, the MFP Committee again reviewed Bill 10-00. This worksession included newly-elected Councilmember Denis, replacing Councilmember Krahne who had resigned from the Council in April 2000. At the worksession, the Committee had two drafts of the bill before it for review. Draft #2:

- Included only sergeants;
- Added a separate bargaining unit for sergeants; and
- Excluded sergeants from "effects bargaining."³⁵

In comparison, Draft #4:

- Included sergeants, lieutenants, and captains;
- Added a separate bargaining unit for lieutenants and captains;
- Included sergeants in the bargaining unit with non-supervisory officers;
- Excluded sergeants, lieutenants, and captains from "effects bargaining;" and
- Included Councilmember Silverman's proposed amendment.³⁶

The Committee discussed and recommended approval of Draft #2.

On June 6, 2000, the full Council discussed Bill 10-00. Councilmember Andrews explained the MFP Committee's recommendation to limit the bill to police sergeants. Councilmember Andrews indicated that the bill's original intent was to expand collective bargaining rights to police sergeants, that "the Executive Branch changed its position on authorizing collective bargaining for captains," and the change "influenced the Committee's decisions to not expand collective bargaining rights beyond sergeants at [the] time."³⁷

The final version of Bill 10-00, as enacted by the Council on June 6, 2000, expanded collective bargaining rights to sergeants, but included the sergeants in the same bargaining unit as non-supervisory police officers.³⁸

2. "Effects Bargaining"

As described above (see page 134), County Executive Duncan's proposed amendments to Bill 10-00 proposed limiting "effects bargaining" only to non-supervisory police officers and excluding sergeants, lieutenants, and captains from "effects bargaining."³⁹

³⁴ Ibid. at p. 9.

³⁵ See 6-5-00 Faden Memo at ©1-4.

³⁶ See 6-5-00 Faden Memo at ©59-63.

³⁷ 6-6-00 Council Legislative Minutes at p. 5.

³⁸ See Final Bill 10-00, § 33-76.

³⁹ 4-3-00 Duncan Memo at p. 3-5.

County Labor/Employee Relations Manager James Torgesen's April 7th memo addressed "effects bargaining" and asserted that "[t]he duty to bargain the 'effects' of an exercise of any of the statutorily defined Employer rights creates restrictions and delays on the Employer's ability to act in the management arena."⁴⁰ Further, "[t]he [County Executive's] requested amendments retain the status quo for the non-supervisory bargaining unit and provide, in essence, a scope of bargaining for supervisory employees which is consistent with bargaining rights extended to all other County employees."⁴¹

FOP Lodge 35 objected to limiting "effects bargaining," asserting that the discussion of "effects bargaining" in the context of this bill was "purely a political decision and does not adversely affect public safety."⁴² Messrs. Bader and Holub, speaking on behalf of the FOP, asserted that "[e]ffects bargaining is fairly common in the public sector in recognition that public sector bargaining rights are more limited than in the private sector."⁴³ According to Messrs. Bader and Holub, "'Effects bargaining' does not prevent management from exercising its rights. It merely balances the interests of the employer and employee and, at best (or worst, depending on one's perspective) requires the employer to think about the effects of its intentions before it acts."⁴⁴

At the Management and Fiscal Policy Committee's April 11th worksession, the Committee recommended *not* extending "effects bargaining" rights beyond non-supervisory police officers.⁴⁵ The Council did not discuss "effects bargaining" at its May 2nd legislative session, where Council President Subin sent the bill back to the MFP Committee for further consideration.⁴⁶

The FOP weighed in on the issue of "effects bargaining" a second time in a June 2nd letter to Councilmember Berlage.⁴⁷ In this letter, Mr. Bader stated that "effects bargaining" has been "misunderstood" and "blamed for all sorts of perceived evils unrelated to the concept."⁴⁸ Mr. Bader urged the Council to "include sergeants in the bargaining unit under the law that has existed for 18 years."⁴⁹

The minutes from the MFP Committee's June 5th worksession do not indicate that the Committee discussed "effects bargaining." The Council, however, discussed "effects bargaining" at length the next day during its legislative session.⁵⁰

⁴⁰ See 6-5-00 Faden Memo at ©25.

⁴¹ See *Ibid.*

⁴² 4-27-00 Bader/Holub Letter at p. 5, 8 (emphasis in original).

⁴³ 4-27-00 Bader/Holub Letter at p. 5.

⁴⁴ *Ibid.* at p. 6.

⁴⁵ 4-11-00 MFP Committee Minutes at p. 2.

⁴⁶ See 5-2-00 Council Legislative Minutes at p. 6-9.

⁴⁷ See 6-2-00 Letter from FOP Lodge 35 President Walter Bader to Councilmember Berlage [hereinafter "6-2-00 Bader Letter"].

⁴⁸ 6-2-00 Bader Letter at p. 5.

⁴⁹ *Ibid.* at p. 8.

⁵⁰ See 6-6-00 Council Legislative Minutes at p. 4-5.

At the Council worksession, Councilmember Silverman made a motion “to adopt the original intent of the bill as it relates to effects bargaining by incorporating the sergeants into the existing collective bargaining unit. The motion would create one police collective bargaining unit and give the sergeants the same rights as other officers equal in relation to effects bargaining.”⁵¹ Councilmember Subin opposed including sergeants in the same bargaining unit with non-supervisory employees, but indicated he would support two bargaining units, both with “effects bargaining” rights.⁵² Councilmember Blair Ewing spoke in support of “effects bargaining” for both sergeants and non-supervisory police officers.⁵³

Councilmember Silverman’s motion to include police sergeants in one collective bargaining unit with “effects bargaining” was approved.⁵⁴ Councilmembers Berlage, Silverman, Denis, and Blair Ewing voted in favor of the motion; Councilmembers Andrews, Praisner, and Subin voted against the motion; and Councilmembers Dacek and Leggett (temporarily) were absent.⁵⁵

The final version of Bill 10-00, as enacted by the Council on June 6, 2000, gave sergeants (who were included in the same bargaining unit as non-supervisory employees) the same right to bargain over “the effect on employees of the employer’s exercise of [management] rights”⁵⁶

C. Recap of Final Bill

As reviewed above, the final version of Bill 10-00, as enacted by the Council on June 6, 2000, expanded collective bargaining rights to police sergeants, including the sergeants in one bargaining unit with non-supervisory police officers, and gave sergeants the right to bargaining over “the effect on employees of the employer’s exercise of [management] rights”⁵⁷

II. ADDING LIEUTENANTS AND CAPTAINS TO THE FIRE AND RESCUE BARGAINING UNIT - BILL 13-01

Bill 13-01, enacted by the Council on July 17, 2001, added Fire and Rescue lieutenants and captains to the collective bargaining unit for Fire and Rescue employees. This section summarizes the history of the bill. The table below provides key dates related to Bill 13-01.

Table 8-2. Key Dates for Bill 13-01

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|---|-------------------|---------------------|---------------|
| March 20, 2001 | April 17, 2001 | MFP Committee June 28, 2001 | July 17, 2001 | July 30, 2001 | Oct. 29, 2001 |
| Bill Sponsored By: | | Council President at the request of County Executive Duncan | | | |

⁵¹ Ibid. at p. 5.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ 6-6-00 Council Legislative Minutes at p. 5.

⁵⁶ Final Bill 10-00, § 33-80(a)(7).

⁵⁷ Ibid. §§ 33-76; 33-80(a)(7).

The Council introduced Bill 13-01 on March 20, 2001. The Council reviewed and enacted the first draft of the bill. Council President Blair Ewing sponsored the bill at the request of County Executive Douglas Duncan.⁵⁸ As introduced and enacted, Bill 13-01:

- Added Fire and Rescue lieutenants and captains to the collective bargaining unit already established under the Fire and Rescue collective bargaining law; and
- Excluded lieutenants and captains from the collective bargaining unit whose primary work assignment was in budget, internal affairs, labor relations, human resources, public information, or quality assurance.⁵⁹

In a memorandum transmitting the proposed legislation to the Council, County Executive Duncan indicated that “Fire and Rescue lieutenants and captains have expressed an interest in having a more active role in determining their salaries, benefits, and other working conditions.”⁶⁰

The Council held a public hearing on Bill 13-01 on April 17, 2001. In written testimony presented at the public hearing, County Labor/Employee Relations Manager James Torgesen spoke in support of the bill and noted that “many of the terms of the existing agreement have been passed through to these employees.”⁶¹

John Sparks, President of the Montgomery County Career Firefighters Association, IAFF Local 1664, also spoke at the public hearing in favor of Bill 13-01.⁶² Mr. Sparks informed the Council that, even though his organization could not yet collectively bargain on behalf of lieutenants and captains, 118 of the 191 lieutenants and captains in the Fire and Rescue Service voluntarily paid dues to IAFF Local 1664.⁶³ Mr. Sparks urged the Council “to bring them out of the closet and to extend the basic rights of representation to these ranks as those employees that they work side by side with currently enjoy.”⁶⁴

The Montgomery County Fire Board⁶⁵ sent a letter to the Council opposing Bill 13-01 and specifically opposing “such action that would place management and supervisory personnel in a position that would compromise their ability to effectively manage those whom they are responsible for supervising.”⁶⁶ The Fire Board set forth the following arguments against extending collective bargaining rights to lieutenants and captains:

- One of the National Labor Relations Act’s principles (governing collective bargaining in private sector employment) is that “management is to have the right to demand the absolute loyalty of its supervisors.... [S]upervisors should owe complete allegiance to management, which they cannot have if they also have allegiance to the union, which marches in the opposite direction.”

⁵⁸ 3-20-01 Council Legislative Minutes at p. 2.

⁵⁹ Final Bill 13-01, § 33-148(4).

⁶⁰ 3-7-01 Memorandum from County Executive Douglas Duncan to Council President Blair Ewing.

⁶¹ 4-17-01 Written Testimony of James Torgesen, Labor/Employee Relations Manager at p. 1-2.

⁶² 4-17-01 Written Testimony of John Sparks, President of the Montgomery County Career Firefighters Association, IAFF Local 1664.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ The Fire Board, among other things, worked with the Fire and Rescue Commission to support volunteer participation in fire, rescue, and emergency medical services. In 2004, the Council abolished the Fire Board.

⁶⁶ 4-17-01 Letter from Andrew White, Chair, Montgomery County Fire Board, to Councilmembers at p. 1 [hereinafter “4-17-01 White Letter”].

- The union has power “to sanction its members for violations of rules. So, for instance, if the union enacts an internal rule to ban captains from chastising a subordinate fellow member, the union would then be able to sanction the captain for disciplining a firefighter The net effect can be to allow the union to control the management and supervision of the department through the union’s power to sanction and discipline supervisors as mere members.”
- Collective bargaining is meant “to equalize the power of labor to that of management.” That cannot occur when management and labor are on the same side; “the desired equilibrium is destroyed.”
- Other alternatives exist to give lieutenants and captains a voice in discussing their wages and benefits.⁶⁷

The Management and Fiscal Policy Committee held a worksession on Bill 13-01 on June 28, 2001. In a packet for the worksession, Senior Legislative Attorney Michael Faden outlined four questions for Committee discussion:

1. Should fire supervisors be able to bargain collectively?
2. What kind of bargaining unit should fire supervisors be placed in?
3. Which supervisors should be excluded?
4. Should the captains and lieutenants vote on their bargaining status?⁶⁸

Of these issues, Mr. Faden made a recommendation only on the last one, where he recommended creating an “independent process” that would allow the fire and rescue lieutenants and captains to vote on whether they would like to become members of the existing fire and rescue bargaining unit.⁶⁹

The minutes from the June 28th MFP Committee worksession reflect that the Committee members (Councilmembers Praisner, Andrews, and Denis) “[a]greed that fire supervisors have the right to bargain collectively, and that captains and lieutenants be placed in the ‘rank and file’ bargaining unit.”⁷⁰ The Committee members discussed whether captains and lieutenants “should vote on their bargaining unit; and recommended that captains and lieutenants be automatically placed in the bargaining unit without any opportunity to vote on the issues.”⁷¹

Councilmember Praisner recommended establishing a separate bargaining unit for captains and lieutenants, but ultimately supported the bill as introduced.⁷² The MFP Committee recommended approval of the bill without any amendments.⁷³

⁶⁷ 4-17-01 White Letter at p. 2-3.

⁶⁸ 6-28-01 Memorandum from Michael Faden, Senior Legislative Attorney, to the MFP Committee at p. 1-3 [hereinafter “6-28-01 Faden Memo”].

⁶⁹ 6-28-01 Faden Memo at p. 2.

⁷⁰ 6-28-01 MFP Committee Minutes at p. 1.

⁷¹ 6-28-01 MFP Committee Minutes at p. 2.

⁷² 6-28-01 MFP Committee Minutes at p. 1-2.

⁷³ 6-28-01 MFP Committee Minutes at p. 2.

The Council enacted Bill 13-01, without any amendments, in its July 17, 2001 legislative session.⁷⁴ In the legislative session, Councilmember Subin indicated that he would abstain from voting because he was “opposed to including captains and lieutenants in the ‘rank and file’ bargaining unit.”⁷⁵ He stated that he was opposed to including police sergeants in the police collective bargaining unit “and that, philosophically, he ha[d] concerns about moving in that direction.”⁷⁶ Councilmember Dacek also indicted that, although she supported giving collective bargaining rights to fire and rescue lieutenants and captains, she did not support including them in the “rank and file” bargaining unit.⁷⁷

Six Councilmembers voted to enact the bill.⁷⁸ They were Councilmembers Phil Andrews, Derick Berlage, Howard Denis, Blair Ewing, Isiah Leggett, and Steven Silverman. Councilmembers Nancy Dacek and Michael Subin voted present. Councilmember Marilyn Praisner was absent.

III. ADDING OTHER GROUPS OF EMPLOYEES TO THE COUNTY GOVERNMENT COLLECTIVE BARGAINING UNITS – BILL 9-01

Bill 9-01, enacted by the Council on May 7, 2002, added additional groups of employees to the County Government collective bargaining units. This section summarizes the history of the bill and is organized as follows:

- **Section A, Legislative History of Bill 9-01**, summarizes the legislative history of Bill 9-01; and
- **Section B, Major Legislative Issues**, reviews the primary issues discussed during the legislative process leading up to the adoption of Bill 9-01.

The table below provides key dates related to Bill 9-01.

Table 8-3. Key Dates for Bill 9-01

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|---|-------------------|---------------------|---------------|
| Feb. 27, 2001 | March 20, 2001 | MFP Committee April 25, 2001 May 1, 2002 | May 7, 2002 | May 20, 2002 | Aug. 19, 2002 |
| Bill Sponsored By: | | Councilmembers Subin, Blair Ewing, Leggett, Berlage, Denis, Silverman, and Andrews, | | | |

⁷⁴ 7-17-01 Council Legislative Minutes at p. 2-4.

⁷⁵ 7-17-01 Council Legislative Minutes at p. 2.

⁷⁶ 7-17-01 Council Legislative Minutes at p. 2.

⁷⁷ 7-17-01 Council Legislative Minutes at p. 2.

⁷⁸ 7-17-01 Council Legislative Minutes at p. 4.

Summary of Major Provisions of Bill 9-01, as Adopted in 2002

Bill 9-01 added two groups of employees to the existing County Government collective bargaining units – the Service, Labor, and Trade (SLT) Unit and the Office, Professional, and Technical (OPT) Unit. The two groups of employees added to these units were:

- Temporary, seasonal, or substitute employees; and
- Employees whose positions were reclassified or reallocated to non-supervisory positions at grade 27 or above on or after July 1, 2002.⁷⁹

The final bill also differentiated between temporary, seasonal, and substitute employees *who were* in occupational classes with predominantly career merit system employees or *who were not* in occupational classes with predominantly career merit system employees.⁸⁰ A member of the first group of temporary, seasonal, and substitute employees had to work six months before becoming a member of a bargaining unit.⁸¹

A member of the second group of temporary, seasonal, and substitute employees could become a “limited-scope” member of a bargaining unit when the member began employment, but the final bill limited the issues over which an employee organization could bargain on the member’s behalf to “wage scales and general wage adjustments” and “dues or service fee deductions.”⁸² The final bill also made these “limited-scope” employees’ inclusion in the bargaining unit contingent on the employee organization (i.e., MCGEO) “adopt[ing] a reduced scale of dues and service fees for employees in the limited-scope membership group”⁸³

The Management and Fiscal Policy Committee minutes from May 1, 2002 indicate that the Committee recommended approval of the bill, noting the support of the Office of Human Resources, the County Executive, and “the Union.”⁸⁴ The Council enacted Bill 9-01 on May 7, 2002. Councilmembers Phil Andrews, Derick Berlage, Howard Denis, Blair Ewing, Isiah Leggett, Marilyn Praisner, Steven Silverman, and Michael Subin voted in favor of the bill. Councilmember Nancy Dacek voted against the bill.⁸⁵

A. Legislative History of Bill 9-01

The Council introduced Bill 9-01 on February 27, 2001; at introduction eight Councilmembers sponsored the bill. The Council held a public hearing on the bill on March 20, 2001. The Management and Fiscal Policy Committee then held two worksessions on the bill – the first in April 2001 and the second in May 2002, more than a year later.

⁷⁹ Final Bill 9-01, § 33-102(4)(H), (P).

⁸⁰ See *Ibid.* § 33-105(c).

⁸¹ *Ibid.* § 33-105(c)(1).

⁸² *Ibid.* § 33-107(b).

⁸³ *Ibid.* § 33-105(c)(2)(B).

⁸⁴ 5-1-02 MFP Committee Minutes at p. 4.

⁸⁵ 5-7-02 Council Legislative Minutes at p. 9.

As introduced, Bill 9-01 proposed adding temporary, seasonal, and substitute employees; non-supervisory employees in grades 27 and above; and some non-merit system employees to the existing County Government bargaining units.⁸⁶

The official bill file for Bill 9-01 contains two drafts of the bill – Draft #2 and Draft #3. The Council introduced and reviewed the second draft and enacted the third draft.

In response to the Council's request for information on the views of employees who would be covered by the bill, Council staff sent an e-mail and/or a postcard to "about 2,700 temporary, seasonal, and substitute employees (who had received a County paycheck during the previous year)."⁸⁷ The relevant language in the e-mail stated:

Bill 9-01 would move certain employees who are currently not covered by collective bargaining into the County employees collective bargaining units. The bill does this by repealing the current law's exemptions for temporary, seasonal, or substitute employees; highly paid (Grade 27+) non-supervisory employees; and certain non-merit employees who are not department heads or deputies.⁸⁸

The relevant language in the postcard stated:

A bill pending before the County Council, Bill 9-01, would move temporary, seasonal, and substitute employees, who currently are not covered by collective bargaining, into the County employees collective bargaining units. If this bill is enacted, affected employees would be represented for collective bargaining purposes by the Municipal and County Government Employees Organization (MCGEO), and could be assessed dues or a service fee by MCGEO.⁸⁹

In a memorandum to the MFP Committee, Senior Legislative Attorney Michael Faden summarized the feedback received by the Council. Mr. Faden described the responses as "uniformly negative ... only one affected employee, a telephone caller, supported the bill without reservation. However, MCGEO attributed the negative response to the wording of the notice."⁹⁰

At the March 2001 public hearing, only a MCGEO representative testified – attorney Carey Butsavage – and he testified in support of Bill 9-01.⁹¹ The County Executive did not send a representative to testify, but later provided written responses to Council staff questions.⁹²

The Management and Fiscal Policy Committee held its first worksession on Bill 9-01 on April 25, 2001. The MFP Committee did not hold its second worksession on the bill until May 1, 2002 – over a year later. The bill file for Bill 9-01 includes a packet for an MFP Committee worksession scheduled for February 28, 2002, but no minutes of the worksession. According to Council staff, the February worksession was scheduled but later postponed until May.

⁸⁶ See Bill 9-01 Draft #2, § 33-102(4) (found in 5-1-02 Memorandum from Michael Faden to the Management and Fiscal Policy Committee at ©2-3 [hereinafter "5-1-02 Faden Memo"]).

⁸⁷ 5-1-02 Faden Memo at p. 1.

⁸⁸ Ibid. at ©7.

⁸⁹ 5-1-02 Faden Memo at ©8.

⁹⁰ Ibid. at p. 1.

⁹¹ See Ibid. at ©10-11.

⁹² Ibid. at 1, ©28-30.

The timing is relevant because Councilmember Howard Denis proposed an amendment to Bill 9-01, which was included in the February 28th MFP Committee worksession packet. Councilmember Denis' amendment, however, underwent revision between the February 28th worksession packet and the May 1st worksession packet. The revisions addressed several issues identified for discussion by Senior Legislative Attorney Faden in the three MFP Committee worksession packets. Part B of this section summarizes some of these issues and the associated discussion of them.

B. Major Legislative Issues

Much of the Council's discussion surrounding Bill 9-01 focused on whether it was appropriate to add temporary, seasonal, and substitute employees to the existing bargaining units by "accretion" or whether the employees should be able to vote on whether they wanted to be included in the bargaining units.⁹³ Accretion means "the process of growth or enlargement by a gradual buildup."⁹⁴ Within the context of Bill 9-01 and collective bargaining, accretion refers to:

[T]he addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity.⁹⁵

The Office of Human Resources and MCGEO sent information to the Council addressing whether "accretion" – adding the employees to the existing bargaining unit represented by the existing bargaining representative – was appropriate for temporary, seasonal, and substitute employees.⁹⁶ If accretion was deemed inappropriate, then an alternative would be to allow the employees to vote on whether to join a bargaining unit.⁹⁷

In a May 2001 memorandum, MCGEO's attorney, Carey Butsavage, asserted that accretion was appropriate for temporary, seasonal, and substitute employees because those employees shared a "community of interest" with regular part-time employees and met other factors considered in an analysis of whether accretion was appropriate in a situation.⁹⁸ Mr. Butsavage concluded that "a 'vote' among the employees who are the subject of 9-01 is neither necessary nor appropriate."⁹⁹

In a November 2001 memorandum, Office of Human Resources Director Marta Brito Perez disagreed with Mr. Butsavage's conclusion that accretion was appropriate for these employees, asserting that "accretion will be found [appropriate] only where the employees to be accreted share an **overwhelming** community of interest with the preexisting unit and have little or no separate identity."¹⁰⁰ Ms. Perez asserted that:

Temporary employees in non-bargaining unit classes, however, should not be accreted to the existing unit because they do not share a sufficient community of interest, let alone meet the higher standard of an overwhelming community of interest, with the regular employees in the bargaining unit.¹⁰¹

⁹³ See *Ibid.* at p. 1, ©37-42, ©49-54.

⁹⁴ Definition found at www.merriam-webster.com.

⁹⁵ 5-1-02 Faden Memo at ©38.

⁹⁶ See *Ibid.* at ©37-42, ©49-54.

⁹⁷ *Ibid.* at p. 3.

⁹⁸ See *Ibid.* at ©38-40.

⁹⁹ *Ibid.* at ©40.

¹⁰⁰ *Ibid.* at ©51 (emphasis in original).

¹⁰¹ *Ibid.* at ©52.

Senior Legislative Attorney Michael Faden's packet for the MFP Committee's May 1st worksession outlined several questions raised by Bill 9-01.¹⁰² The Committee and legislative session minutes reflect limited discussion by Councilmembers on these issues. The predominant issues discussed were:

1. How many employees, and in which job classifications, would be added to the bargaining units?
2. Should the affected employees be able to vote on joining a bargaining unit?
3. Should short-term employees be treated like other temporary employees for collective bargaining purposes?

The following summarizes the discussion and resolution of these issues.

1. Which employees would be added to the bargaining units?

Bill 9-01, as introduced, would have added approximately 2,700 employees to the OPT or the SLT bargaining units under the County Collective Bargaining law.¹⁰³ At the time, MCGEO represented approximately 4,000 employees in these bargaining units.¹⁰⁴ The estimated 2,700 employees included:

- 2,250 temporary, seasonal, and substitute employees *who were not* in occupational classes with predominantly career merit system employees;
- 410 temporary, seasonal, and substitute employees *who were* in occupational classes with predominantly career merit system employees; and
- 54 non-supervisory employees in grades 27 or above.¹⁰⁵

In the fiscal impact statement on Bill 9-01, Office of Management and Budget Director Robert Kendal estimated that changing the collective bargaining status of these employees would have a fiscal impact of approximately \$900,000 in FY02.¹⁰⁶ This included additional OHR staff to handle an increased workload, increased health benefits, and increased operating expenses.¹⁰⁷ Mr. Kendal also estimated that the bill would result in over \$250,000 annually in additional dues or services fees to MCGEO.¹⁰⁸

MCGEO attorney Carey Butsavage proposed an amendment to the bill that would have defined a "part-time" employee as follows:

For purposes of this section, "part-time" and, therefore, included employee means among other things: employees who are listed or qualified to work on a regular basis as a substitute in unit positions; employees whose hours of work over a given calendar quarter exceed an average of four (4) per week for the period; and, employees who work on a "seasonal" basis so long as the seasonal period for which they are hired lasts more than 30 days.¹⁰⁹

¹⁰² See *Ibid.* at p. 1-6.

¹⁰³ 5-1-02 Faden Memo at p. 2.

¹⁰⁴ *Ibid.* at ©51.

¹⁰⁵ *Ibid.* at p. 2.

¹⁰⁶ *Ibid.* at ©32.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.* at ©33.

¹⁰⁹ *Ibid.* at ©42.

In August 2001, Senior Legislative Attorney Faden posed several questions (in writing) to Office of Human Resources Director Marta Perez, including whether she supported MCGEO's amendment.¹¹⁰ Ms. Perez's response included the suggestion to limit the addition "of temporary employees to those employees in existing bargaining unit classes" and basing eligibility on "satisfying a minimum of twenty-five hours of scheduled work per pay period."¹¹¹

In August 2001, Mr. Faden also posed several questions (in writing) to MCGEO President Gino Renne.¹¹² Based on an assertion by MCGEO attorney Mr. Butsavage that other jurisdictions include short-term employees in collective bargaining units, Mr. Faden sought examples of other local governments "with similar collective bargaining structures that include short-term employees in their bargaining units."¹¹³ In his November 2001 written response to Mr. Faden's five questions, Mr. Renne did not respond to this question. The Council did not incorporate MCGEO's suggested definition of part-time employee into Bill 9-01.

The MFP Committee did, however, address Councilmember Denis' proposed amendment. The first draft of Councilmember Denis' proposed amendment would have added only a portion of the temporary, seasonal, and substitute employees to the collective bargaining units – those who were in a position that was already in the OPT or SLT bargaining units – along with non-supervisory employees in grade 27 and above.¹¹⁴ This change would have reduced the number of employees potentially affected by the bill to approximately 470 employees.¹¹⁵

By the May 1st MFP Committee worksession, however, Councilmember Denis' proposed amendment had been revised to include temporary, seasonal, and substitute employees not in job classes in the OPT or SLT bargaining units, but who worked at least 25 hours per pay period (incorporating a portion of OHR Director Perez's proposal).¹¹⁶ Examples of employees in this group included lifeguards, recreation workers, and leaf collectors and represented an additional 2,250 employees.¹¹⁷ According to Mr. Faden, "these groups include many of the people who expressed strong opposition to membership in the bargaining unit" and who "arguably have a more remote relationship to current bargaining unit members."¹¹⁸

Councilmember Denis' revised amendment was incorporated into the final version of Bill 9-01, adopted by the Council on May 7, 2002. The minutes from the May 1, 2002 MFP Committee worksession and from the Council's May 7, 2002 legislative session do not, however, include discussion of any Council debate over the incorporation of Mr. Denis' suggested language.

¹¹⁰ Ibid. at ©43-44.

¹¹¹ Ibid. at ©49.

¹¹² 5-1-02 Faden Memo at ©43-44.

¹¹³ Ibid. at ©44.

¹¹⁴ 2-28-02 Faden Memo at ©58, 60.

¹¹⁵ Ibid. at p. 3.

¹¹⁶ 5-1-02 Faden Memo at p. 3, ©61.

¹¹⁷ Ibid. at p. 3.

¹¹⁸ Ibid.

2. Should the affected employees be able to vote on joining a bargaining unit?

Bill 9-01, as introduced, would “accrete” the employees covered under the bill into the existing OPT and SLT bargaining units and the affected employees would not have an opportunity to vote on whether they wanted collective bargaining rights or whether they wanted to be represented by MCGEO. As noted above, Council staff reported that responses from temporary, seasonal, and substitute employees to Bill 9-01 were “uniformly negative.”¹¹⁹

In Mr. Faden’s August 2001 questions to MCGEO President Gino Renne, Mr. Faden asked whether “MCGEO contend[ed] that the views of the affected employees [were] irrelevant to the decision whether to include them in a bargaining unit? If not, how should their views be measured?”¹²⁰ In response, Mr. Renne answered that:

[T]o the extent it is determined that the employees at issue are ... a true accretion to the existing unit, then, the “views” of the affected employees are, as a matter of law, not determinative on the inclusion issue.¹²¹

Mr. Renne further asserted that:

[T]he question of employee sentiments is effectively moot and a bit of a red herring. Thus as an organization that values, respects and honors its members’ views and sentiments, MCGEO is certain that – when presented with a fair and balanced picture of the advantages of inclusion in the bargaining unit – the affected employees will overwhelmingly support inclusion, just as their co-workers in the unit now overwhelmingly support and enjoy the advantages of Unionization.¹²²

Office of Human Resources Director Perez disagreed, asserting that “[t]here are a substantial number of temporary employees who, if considered eligible, should have the right to express an interest in representation, and if there is sufficient interest have the opportunity to cast a vote.”¹²³ Ms. Perez also disagreed with the assertion that this group of employees should be accreted into the existing bargaining units, stating that:

Because the accretion process adds employees to an existing unit without according these employees any representational voting rights, the accretion doctrine has been narrowly applied in both the private sector and federal sector cases.¹²⁴

At the May 1st MFP Committee worksession, Councilmember Praisner indicated “that she supports the legislation but that seasonal employees, because they are a large group, should have the opportunity to vote on whether to become part of the bargaining unit rather than becoming a part of the unit by accretion”¹²⁵ In the Council’s May 7th legislative session, Councilmember Dacek “expressed concern that the seasonal employees did not have the opportunity to vote on

¹¹⁹ Ibid. at p. 1.

¹²⁰ 5-1-02 Faden Memo at ©44.

¹²¹ Ibid. at ©45.

¹²² Ibid. at ©45-46.

¹²³ Ibid. at ©50.

¹²⁴ Ibid.

¹²⁵ 5-1-02 MFP Committee Minutes at p. 4.

becoming members of the union” and proposed an amendment to the bill requiring that MCGEO submit “a petition which contains the uncoerced signatures of 30 percent of the employees in this class signifying their desire to be represented by that organization for purposes of collective bargaining”¹²⁶

Councilmember Praisner supported Councilmember Dacek’s amendment, asserting that “taking another step in this process is not harmful and would be legitimate in addressing these concerns.”¹²⁷ The Council voted against Councilmember Dacek’s motion 7-2.¹²⁸ Councilmembers Dacek and Praisner voted for the motion. Councilmembers Andrews, Berlage, Denis, Ewing, Leggett, Silverman, and Subin voted against the motion.¹²⁹

3. Should short-term employees be treated like other temporary employees for collective bargaining purposes?

The Office of Human Resources recommended that collective bargaining rights for seasonal workers – who worked, on average, 40 days in the year 2000 – be limited to bargaining over wages.¹³⁰ In the second draft of his amendment, Councilmember Denis recommended limiting the bargaining rights of temporary, seasonal, or substituted employees *who were not* in occupational classes with predominantly career merit system employees to the right to bargain over “wage scales and general wage adjustments; and dues or service fee deductions.”¹³¹

The final version of the bill incorporated the language in Councilmember Denis’ amendment.¹³² Similar to the question of which employees should be added, the minutes from the May 1st MFP Committee worksession and from the May 7th Council legislative session do not reflect any Council discussion on this issue.

IV. ADDING DEPARTMENT OF CORRECTION AND REHABILITATION SERGEANTS TO THE COUNTY GOVERNMENT OFFICE, PROFESSIONAL, AND TECHNICAL BARGAINING UNIT – EXPEDITED BILL 11-05

Expedited Bill 11-05, enacted by the Council on June 28, 2005, added correctional sergeants in the Department of Correction and Rehabilitation (DOCR) to the Office, Professional, and Technical (OPT) bargaining unit created in the County Collective Bargaining law. This section summarizes the history of the bill. The table below provides key dates related to Bill 11-05.

¹²⁶ 5-7-02 Council Legislative Minutes at p. 2.

¹²⁷ Ibid.

¹²⁸ Ibid. at p. 3.

¹²⁹ 5-7-02 Council Legislative Minutes at p. 3.

¹³⁰ 5-1-02 Faden Memo at ©29.

¹³¹ Ibid. at ©61-63.

¹³² Final bill 9-01, §§ 33-105(c)(2); 33-107(b).

Table 8-4. Key Dates for Bill 11-05

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|---|-------------------|---------------------|---------------|
| April 26, 2005 | June 14, 2005 | MFP Committee June 20, 2005 | June 28, 2005 | July 10, 2005 | July 10, 2005 |
| Bill Sponsored By: | | Council President at the request of County Executive Duncan | | | |

The Council introduced the first draft of Expedited Bill 11-05 on April 26, 2005. Council President Thomas Perez sponsored the bill at the request of County Executive Douglas Duncan.¹³³

The bill proposed adding approximately 42 newly-created positions of correctional sergeant to the County Government's OPT bargaining unit.¹³⁴ These correctional sergeant positions replaced master correctional officer positions, which were included in the OPT unit and which were abolished over time.¹³⁵ Because the new sergeant positions were supervisory, they would be excluded from the bargaining unit without an amendment to the County Collective Bargaining law, which excluded supervisors.¹³⁶

County Executive Duncan explained in his memo that:

The Municipal and County Government Employees Organization, Local 1994 (MCGEO), which represents the OPT bargaining unit, is, of course, in favor of the new promotional opportunities for its members than the new Correctional Sergeant positions will provide. However, MCGEO is also concerned about the loss of bargaining unit positions that the reorganization within the Department of Correction and Rehabilitation will cause. We are sympathetic to the Union's concern and view this proposed change as consistent with earlier legislative initiatives that allowed the first level of supervision to be included in the other public safety bargaining units (Fire/Rescue and Police).¹³⁷

On June 10, 2005, a group of Department of Correction and Rehabilitation officers sent the Council a statement and a petition with 113 signatures opposing Bill 11-05.¹³⁸ The statement asserted that MCGEO had not communicated "with the majority of the Officers involved" about the amendment and that the amendment would "do more harm than good and could be seen as monetarily motivated by Local Union 1994."¹³⁹ In response to a Council staff inquiry about the statement and petition, County Labor/Employee Relations Manager James Torgesen explained that the position changes were the result of "an occupational class study of the correctional officer class series" and the determination of "a need to establish a job class that provided closer more direct supervision of correctional officers within the County's detention facilities."¹⁴⁰

¹³³ 3-17-05 Memorandum from County Executive Douglas Duncan to Council President Thomas Perez (found in 4-26-05 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at ©5[hereinafter "4-26-05 Faden Memo"]).

¹³⁴ See Final Expedited Bill 11-05, § 33-102(4); 4-26-05 Faden Memo at ©5.

¹³⁵ 4-26-05 Faden Memo at ©5.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ See 6-10-05 Statement of Montgomery County Correctional Officers on Expedited Bill No. 11-5.

¹³⁹ Ibid. at p. 2.

¹⁴⁰ 6-16-05 Memorandum from James Torgesen, Labor/Employee Relations Manager, to Michael Faden, Senior Legislative Attorney (found in 6-20-05 Memorandum from Michael Faden, Senior Legislative Attorney, to Management and Fiscal Policy Committee at ©12 [hereinafter "6-20-05 Faden Memo"]).

On June 14, 2005, the Council held a public hearing on Bill 11-05. Office of Human Resources Director Joseph Adler testified on behalf of County Executive Duncan in support of the bill.¹⁴¹ Mr. Adler testified that the sergeants had the same hours and working conditions as the officers that they supervised and that their “community of interest aligns with including the positions in the bargaining unit.”¹⁴²

The Management and Fiscal Policy Committee held a worksession on Bill 11-05 on June 20, 2005. In the worksession packet, Senior Legislative Attorney Michael Faden recommended “that the law require an election or some other mechanism to show substantial support among the affected employees before this change is made by legislative fiat.”¹⁴³ At the worksession, Committee members Praisner, Andrews, and Denis “received information that 68 percent of the uniformed Correction Department Sergeants in the Office, Professional, and Technical County employees’ collective bargaining unit have signed authorization cards expressing support for the bill.”¹⁴⁴

The MFP Committee requested certification from a third party of the authenticity of the authorization cards and recommended approval of the bill, without amendment, pending the certification.¹⁴⁵ On June 21, 2005, Andrew Strongin, the Labor Relations Administrator under the County Collective Bargaining law, sent a letter to the Council in which he indicated he had reviewed the authenticity of the authorization cards and stated: “I hereby verify that an authentic majority (defined as at least 50 percent plus one, and meaning at least 23) of those Correctional Sergeants have signed cards expressing an interest in representation by Local 1994 as part of the Office, Professional, and Technical bargaining unit.”¹⁴⁶

The Council unanimously voted to enact Expedited Bill 11-05 on June 28, 2005 without making any amendments to the bill.¹⁴⁷ Councilmembers Phil Andrews, Howard Denis, Nancy Floreen, Michael Knapp, George Leventhal, Thomas Perez, Marilyn Praisner, and Steven Silverman voted in favor of the bill. Councilmember Michael Subin was absent.

¹⁴¹ See Written Testimony of Joseph Adler, Director, Office of Human Resources (found in 6-20-05 Faden Memo at ©7).

¹⁴² *Ibid.*

¹⁴³ 6-20-05 Faden Memo at p. 2. The MFP Committee reviewed the second draft of the bill. The second draft included a technical change from the first draft, changing the misnomered “Department of Corrections and Rehabilitation” to the “Department of Correction and Rehabilitation.”

¹⁴⁴ 6-20-05 MFP Committee Minutes at p. 1.

¹⁴⁵ *Ibid.*

¹⁴⁶ 6-20-05 Faden Memo at ©14.

¹⁴⁷ See 6-28-05 Council Legislative Minutes at p. 3.

CHAPTER IX. Bills Amending Process, Procedures, and Dates for Collective Bargaining

This chapter describes seven bills that made changes to process, procedures, dates, and technical provisions in the “Meet and Confer” law (1979-1982) and in the three collective bargaining laws (1983-2007). It is organized chronologically as follows:

- **Section I**, Revised “Meet and Confer” Election Certification Requirement - Bill 23-79,
- **Section II**, Revised Dates in the Police Labor Relations Law - Emergency Bill 24-82;
- **Section III**, Adopted Uniform Procedures for Executive Regulations - Bill 46-83;
- **Section IV**, Revised Deadlines for Council Action - Emergency Bill 3-93;
- **Section V**, Revised Practices and Procedures in the Collective Bargaining Laws - Expedited Bill 30-03,
- **Section VI**, Revised Impasse Resolution Procedures in Police Labor Relations Law - Expedited Bill 19-04, and
- **Section VII**, Revised Process for Appointing a Permanent Umpire or Labor Relations Administrator - Expedited Bill 2-07.

I. BILL 23-79 – REVISED “MEET AND CONFER” ELECTION CERTIFICATION REQUIREMENT

Bill 23-79, enacted on October 2, 1979, changed how an employee organization could become the certified representative for a group of employees under the “Meet and Confer” law.

Table 9-1. Key Dates for Bill 23-79

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|---|-------------------|---------------------|---------------|
| March 20, 1979 | July 17, 1979 | Sept. 17, 1979 | Oct. 2, 1979 | Oct. 11, 1979 | Jan. 10, 1980 |
| Bill Sponsored By: | | Council President at the request of County Executive Gilchrist and Councilmember Crenca | | | |

Under the “Meet and Confer” law adopted in 1976, in order to represent a group of employees in discussions with County representatives, an employee organization had to win a majority of votes cast in the election *and* at least 60 percent of eligible employees had to vote in the election.¹

¹ See Final Bill 11-76, § 33-66(f). Note – in February 1979, certain sections of Chapter 33 of the Montgomery County Code were renumbered following enactment of a new “Merit System” Article in that chapter. The sections of the code that made up the “Meet and Confer” law – entitled “Employer-Employee Relations in Chapter 33 – were renumbered in this process. New section numbers 33-41 to 33-52 replaced the old section numbers 33-62 to 33-73. See 10-2-79 Memorandum from Pearl Schloo, Legislative Staff Specialist, to County Council. Accordingly, the description of Bill 23-79 in this chapter refers to the new renumbered sections of the “meet and confer” law, which differ from the section numbers described in Chapter 4 of this report.

Bill 23-79, introduced by the Council on March 20, 1979, removed the requirement that at least 60 percent of eligible employees vote in the election in order for an employee organization to be elected to represent the employees.² The Council considered a number of amendments to the bill, but in October 1979, adopted the bill as introduced.

The new requirement stated:

When an organization receives at least fifty percent (50%) of valid votes cast in the election, the Chief Administrative Officer shall certify it as the official employee organization for the employee unit.³

Discussion of Bill. County Executive Charles Gilchrist proposed Bill 23-79 as “a more realistic approach to allowing employee organizations to participate in the meet and confer process.”⁴ Mr. Gilchrist noted that only one employee organization had been certified to represent a group of employees under the “Meet and Confer” law between March 1977 and March 1979.⁵ Mr. Gilchrist attributed this “in part to the restrictiveness of the present voting requirement.”⁶

In March 1978 – before the introduction of Bill 23-79, the County Government held a representation election for certain County Government employees to vote on whether they wanted to be represented by an employee organization under the “Meet and Confer” law.⁷ The choice in the election was between representation by MCGEO or no representation.⁸ Although just over 90 percent of employees voted for representation by MCGEO, only 55 percent of eligible employees voted in the election.⁹ Because 60 percent of eligible voters did not vote in the election, MCGEO could not be certified to represent the employees.¹⁰

The Council considered two amendments to Bill 23-79, both which proposed reducing the minimum voting requirement, instead of removing it entirely. One amendment proposed reducing the percent of eligible employees required to vote in an election to 50 percent and the other proposed reducing it to 30 percent.¹¹ When the Council introduced the bill, Councilmember Crenca suggested that the Council discuss the amendments with MCGEO and Executive Branch staff.¹²

² See Final Bill 23-79, § 33-45(f); 3-6-79 Memorandum from Charles Gilchrist, County Executive, to Council President Neal Potter [hereinafter “3-6-79 Gilchrist Memo”].

³ Final Bill 23-79, § 33-45(f).

⁴ 3-6-79 Gilchrist Memo.

⁵ Ibid.

⁶ Ibid.

⁷ See 7-25-78 Memorandum from William Hussmann, Chief Administrative Officer, to All Employees.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ 9-14-79 Memorandum of Understanding from Pearl Schloo, Legislative Staff Specialist, to County Council at p. 1. It is unclear from the information in the bill file which of the three Councilmembers – Scull, Gelman, and Potter – proposed which amendment.

¹² 3-20-79 Council Legislative Minutes at p. 2523.

The Council held a worksession on Bill 23-79 on September 17, 1979, but the bill file does not contain the minutes from that worksession. Council staff's memorandum to the Council in preparation for the worksession identified several points for the Council's consideration:

- All speakers at the July 17, 1979 public hearing testified against the amendments to the bill;
- A 1977 Maryland General Assembly Task Force on Collective Bargaining for Public Employees recommended allowing election of an employee organization by a simple majority vote; and
- "[M]ost state and local labor laws require only a majority of votes cast to determine the employee representative organization."¹³

During the Council's October 2, 1979 legislative worksession, Councilmember Elizabeth Scull opposed the bill because she opposed removing the requirement for a minimum number of votes.¹⁴ She expressed a preference for lowering the minimum percentage, rather than removing it from the law, citing awareness of problems in other jurisdictions:

[C]aused by the demands of irresponsible leaders of employee organizations. These are not private groups whose decisions affect only their own members. The decisions can have serious impact on all of the people of the County. Consequently, it is not unreasonable to require that the leaders have the support of a significant number of employees."¹⁵

Councilmember Scull made a motion (that was seconded) to amend the bill to require that 30 percent of eligible voters vote in an election.¹⁶ The motion failed with Councilmembers Scull and Gelman voting for it and Councilmembers Crenca, Fosler, Gudis, and Spector voting against it. Councilmember Potter was absent.¹⁷

The Council then voted on the bill, as proposed by the County Executive. The Council enacted Bill 23-79 with Councilmembers Rose Crenca, Scott Fosler, Michael Gudis, and Ruth Spector voting in favor of the bill, Councilmembers Esther Gelman and Elizabeth Scull voting against the bill. Again, Councilmember Neal Potter was absent.¹⁸

II. EMERGENCY BILL 24-82 – REVISED DATES IN THE POLICE LABOR RELATIONS LAW

Emergency Bill 24-82, enacted on June 8, 1982, changed certain dates in the Police Labor Relations law, which the Council had enacted in April 1982. County Executive Charles Gilchrist proposed the bill because his staff determined that the effective date of the Police Labor Relations law – in July 1982 – fell *after* certain dates identified in the law for employee organizations to file petitions for election and certification.¹⁹

¹³ Ibid.

¹⁴ 10-2-79 Council Legislative Minutes at p. 2751.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ 5-13-82 Memorandum from Charles Gilchrist, County Executive, to Council President Neal Potter.

The Council held a public hearing on Bill 24-82 on the same day it enacted the bill (there were no speakers at the public hearing); the Council did not hold a separate worksession on the bill.²⁰ The Council unanimously voted to enact Emergency Bill 24-82 (7-0) on June 8, 1982 – one week after its introduction.²¹ Councilmembers Rose Crenca, Scott Fosler, Esther Gelman, Michael Gudis, Neal Potter, David Scull, and Ruth Spector voted in favor of Bill 24-82.

Table 9-2. Key Dates for Emergency Bill 24-82

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--|-------------------|---------------------|---------------|
| June 1, 1982 | June 8, 1982 | None | June 8, 1982 | June 21, 1982 | June 21, 1982 |
| Bill Sponsored By: | | Council President at the request of County Executive Gilchrist | | | |

III. BILL 46-83 – ADOPTED UNIFORM PROCEDURES FOR EXECUTIVE REGULATIONS

Bill 46-83, enacted by the Council on December 6, 1983, established a “uniform procedure for adoption, review, repeal, notification, and compilation of Executive regulations” and for the publication of the Code of Montgomery County Regulations and the Montgomery County Register.²² Councilmember David Scull sponsored the bill.

With respect to labor relations laws in effect in 1983, Bill 46-83 included a technical amendment to the language addressing regulations developed by the Permanent Umpire under the Police Labor Relations law.²³ The Council unanimously voted (6-0) to enact Bill 46-83 as introduced.²⁴ Councilmembers Scott Fosler, Esther Gelman, Michael Gudis, William Hanna, Neal Potter, and David Scull voted for the legislation; Councilmember Rose Crenca was absent.²⁵

Table 9-3. Key Dates for Bill 46-83

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--|-------------------|---------------------|----------------|
| June 21, 1983 | July 26, 1983 | GSA Committee ²⁶ Sept. 12, 1983 Oct. 3, 1983 Oct. 17, 1983 Council Nov. 22, 1983 | Dec. 6, 1983 | Dec. 15, 1983 | March 15, 1984 |
| Bill Sponsored By: | | Councilmember David Scull | | | |

²⁰ See 6-8-82 Public Hearing Transcript at p. 2.

²¹ 6-8-82 Council Legislative Minutes at p. 3974.

²² 9-23-83 Memorandum from Jacqueline Rogers, Director, Office of Management & Budget, to County Council at p. 1.; Final Bill 46-83, Introduction.

²³ See Final Bill 46-83, § 33-77(a)(1).

²⁴ 12-6-83 Council Legislative Minutes at p. 5150.

²⁵ Ibid.

²⁶ “GSA Committee” refers to the Council’s Government Structure, Automation & Regulation Committee.

IV. EMERGENCY BILL 3-93 – REVISED DEADLINES FOR COUNCIL ACTION

Emergency Bill 3-93, enacted by the Council on March 2, 1993, revised certain deadlines in the Police Labor Relations law and the County Collective Bargaining law, and made other technical changes to the law.²⁷ Council President Marilyn Praisner sponsored the bill and the Council did not amend the bill before enacting it.²⁸

Table 9-4. Key Dates for Emergency Bill 3-93

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--------------------------------|-------------------|---------------------|----------------|
| Jan. 26, 1993 | Feb.9, 1993 | MFP Committee Feb. 18, 1993 | March 2, 1993 | March 11, 1993 | March 11, 1993 |
| Bill Sponsored By: | | Council President Praisner | | | |

Bill 3-93 changed the date by which the Council had to indicate its intention to appropriate funds for or otherwise implement a collective bargaining agreement:²⁹

- In the Police Labor Relations law, the date changed from April 25 to May 1;³⁰ and
- In the County Collective Bargaining law, the date changed from April 15 to May 1.³¹

Under the County Collective Bargaining law, the bill also changed the date – from May 1 to May 10 – by which the parties had to submit results of subsequent negotiations if the Council had indicated its intent to reject a part of a collective bargaining agreement.³²

In addition, Bill 3-93 made other “technical” amendments to the law. Specifically, Bill 3-93:

- Required the Council to indicate “by resolution,” rather than “by a majority vote” its intention to appropriate funds for or implement terms in a collective bargaining agreement;³³ and
- Added language to clarify that any collective bargaining agreement had to provide for automatic reduction of elimination of wages or benefits if “*sufficient* funds are not appropriated *for any fiscal year in which the agreement is in effect.*”³⁴ (The italicized language represents language added to the law by Bill 3-93.)

²⁷ See Final Bill 3-93.

²⁸ Ibid.

²⁹ Ibid. §§ 33-80(g); 33-108(i).

³⁰ Ibid. § 33-80(g).

³¹ Ibid. § 33-108(i).

³² Ibid. § 33-108(i).

³³ Ibid. §§ 33-80(g); 33-108(i).

³⁴ Ibid. §§ 33-80(g); 33-108(j)(2).

The Fraternal Order of Police, Montgomery Lodge 35 (FOP) objected to certain portions of Bill 3-93.³⁵ While the FOP did not object to the date changes in the bill, it objected to, among other things, “the insertion of the word ‘sufficient’ before funds in both laws” as described above.³⁶

The FOP suggested problems would arise from the technical changes because “all the parties know, in practice, what existing laws mean” and that the FOP would incur a “complex and costly” burden by having to reprint copies of the law for its stewards and officials.³⁷ The FOP also stated that “arbitrators, the County Labor Relations Administrator, the Police Permanent Umpire, and union and County officials are familiar with current law and ... that the unnecessary changes may create considerable confusion.”³⁸

At a February 1993 Management and Fiscal Policy (MFP) Committee worksession on Bill 3-93, the Committee noted the FOP’s objections, and recommended approval of the bill (2-0, Councilmember Praisner was absent).³⁹ The Council considered Bill 3-93 during its March 2, 1993 legislative session. Councilmember Hanna stated that the MFP Committee had discussed the FOP’s concerns and “believed that the staff explanation concerning the revisions [in the bill] was a satisfactory response to the issues raised by the unions.”⁴⁰ Senior Legislative Attorney Michael Faden explained his view that “the amendments in the bill do not change the substance of the law other than the deadlines, and that neither the unions nor management will receive or lose rights as a result of these amendments.”⁴¹

The Council unanimously voted to enact Emergency Bill 3-93 (9-0). Councilmembers Bruce Adams, Derick Berlage, Nancy Dacek, Gail Ewing, William Hanna, Betty Ann Krahne, Isiah Leggett, Marilyn Praisner, and Michael Subin voted in favor of the bill.

V. EXPEDITED BILL 30-03 – REVISED PRACTICES AND PROCEDURES IN THE COLLECTIVE BARGAINING LAWS

Expedited Bill 30-03, enacted by the Council on September 30, 2003, made a number of changes to the Police Labor Relations law, the County Collective Bargaining law, and the Fire and Rescue Collective Bargaining law. The Council enacted the bill without making any amendments to it.⁴²

³⁵ See 2-12-93 Letter from Walter Bader, President, Fraternal Order of Police, Montgomery Lodge 35, to Council President Marilyn Praisner at p. 1.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid. at p. 2.

³⁹ 2-18-93 MFP Committee Minutes at p. 2.

⁴⁰ 3-2-93 Council Legislative Minutes at p. 8613.

⁴¹ Ibid.

⁴² See Final Bill 30-03.

Table 9-5. Key Dates for Expedited Bill 30-03

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|-----------------------|--|--------------------------|----------------------------|--------------------|
| Sept. 9, 2003 | Sept. 16, 2003 | MFP Committee Sept. 22, 2003 | Sept. 30, 2003 | October 9, 2003 | October 9, 2003 |
| Bill Sponsored By: | | Management and Fiscal Policy Committee | | | |

Council staff's memorandum to the Council on September 30th describes the changes the bill made to the law as follows:

Bill 30-03 ... reflects a consensus of [MFP] Committee member, union representative, and Office of Human Resources views. It does the following for each of the bargaining units:

- Repeals obsolete certification provisions in the police and County employee bargaining unit laws;
- moves the date for selection of the impasse neutral/arbitrator from November 10 to September 10;
- directs the Executive to describe each new collective bargaining agreement and estimate its cost in the annual operating budget;
- directs the employer to submit each new contract to the Council by April 1, unless extenuating circumstances cause a delay;
- requires the employer's submission to the Council to attach any implementing bills or regulations, show the changes in the contract, and include any binding side letters;
- allows the Council by majority vote to defer its May 1 action deadline to any date up to May 15, with the parties' May 10 renegotiation deadline automatically deferred by the same number of days;
- clarifies that the same Council review process and deadlines apply to Council review of contract cost items in the second and third years of a contract; and
- clarifies that the same Council review process applies to out-of-cycle contract amendments, but with deadlines that reflect the date each amendment is submitted to the Council.⁴³

Senior Legislative Attorney Michael Faden's memo indicates that there were no speakers at the public hearing on Bill 30-03.⁴⁴ Additionally, Jim Torgesen, County Labor Relations Manager and MCGEO representative Bob Stewart supported the Bill at the Management and Fiscal Policy Committee's September 2003 worksession on the bill. The MFP Committee unanimously recommended the bill to the Council.⁴⁵

⁴³ 9-30-03 Memorandum from Michael Faden, Senior Legislative Attorney to County Council at p. 1-2.

⁴⁴ Ibid. at p. 2.

⁴⁵ Ibid.

The Council unanimously voted (9-0) to enact Expedited Bill 30-03. Councilmembers Phil Andrews, Howard Denis, Nancy Floreen, Michael Knapp, George Leventhal, Thomas Perez, Marilyn Praisner, Steven Silverman, and Michael Subin voted in favor of the bill.⁴⁶

VI. EXPEDITED BILL 19-04 – REVISED IMPASSE RESOLUTION PROCEDURES IN POLICE LABOR RELATIONS LAW

Expedited Bill 19-04, enacted by the Council on July 13, 2004, “amend[ed] the law regarding collective bargaining with County police officers” in response to a term of a collective bargaining agreement with Fraternal Order of Police Lodge 35.⁴⁷ The Council enacted the bill without making any amendments to it.⁴⁸

Specifically, Bill 19-04 established two new processes to resolve bargaining impasses. The first established a process for the parties to resolve bargaining impasses over “reopener matters.”⁴⁹ A “reopener matter” refers to an issue identified in a collective bargaining agreement that the parties agreed to bargain over by a specified date.⁵⁰ The second established a process for the parties to resolve bargaining impasses over “the effects on employees of an exercise of an employer right”⁵¹

The impasse resolution process for “effects bargaining” allowed the County Executive to implement a last offer before utilizing the impasse procedure if the “exercise of an employer right ... has a demonstrated, significant effect on the safety of the public”⁵² At the same time, with respect to “effect bargaining,” the bill prohibited the County Executive from “delaying or refusing to participate in the impasse procedure ... after the employer implements a final offer.”⁵³

The Management and Fiscal Policy Committee reviewed Bill 19-04 at its July 12, 2004 worksession and recommended approval of the bill.⁵⁴ The Council unanimously voted (9-0) to enact Expedited Bill 19-04. Councilmembers Phil Andrews, Howard Denis, Nancy Floreen, Michael Knapp, George Leventhal, Thomas Perez, Marilyn Praisner, Steven Silverman, and Michael Subin voted in favor of the bill.⁵⁵

Table 9-6. Key Dates for Expedited Bill 19-04

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|---|-------------------|---------------------|---------------|
| June 22, 2004 | July 12, 2004 | MFP Committee July 13, 2004 | July 13, 2004 | July 16, 2004 | July 16, 2004 |
| Bill Sponsored By: | | Council President at the request of County Executive Duncan | | | |

⁴⁶ 9-30-03 Council Legislative Minutes at p. 3.

⁴⁷ 7-13-04 Memorandum from Michael Faden, Senior Legislative Attorney to County Council at p. 1.

⁴⁸ See Final Bill 19-04.

⁴⁹ See Final Bill 19-04, § 33-81(c)(1).

⁵⁰ Ibid. § 33-81(c)(1)(A).

⁵¹ Ibid. § 33-81(c)(2).

⁵² Ibid. § 33-81(c)(2)(C).

⁵³ Ibid. § 33-82(a)(10).

⁵⁴ 7-12-04 MFP Committee Minutes at p. 2.

⁵⁵ 7-13-04 Council Legislative Minutes at p. 6.

VII. EXPEDITED BILL 2-07 – REVISED PROCESS FOR APPOINTING A PERMANENT UMPIRE OR LABOR RELATIONS ADMINISTRATOR

Expedited Bill 2-07, enacted by the Council on February 27, 2007, provided that “if the Permanent Umpire [in the Police Labor Relations law] dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve as Permanent Umpire, the County Executive must appoint [and the Council confirm] a new Permanent Umpire to serve out the remainder of the pervious appointee’s 5-year term.”⁵⁶ The Fraternal Order of Police supported the bill.⁵⁷

At its February 12, 2007 worksession, the Management and Fiscal Policy Committee, based on an Executive Branch staff recommendation, recommended including the same procedure for the Labor Relations Administrators in the County Collective Bargaining law and in the Fire and Rescue Collective Bargaining law.⁵⁸ The Committee also recommended requiring “Council confirmation when the fire Labor Relations Administrator is automatically reappointed” under the law.”⁵⁹ The Committee recommended approval of the bill with these amendments.⁶⁰

The Council unanimously voted (9-0) to enact Expedited Bill 2-07. Councilmembers Phil Andrews, Roger Berliner, Valerie Ervin, March Elrich, Nancy Floreen, Michael Knapp, George Leventhal, Marilyn Praisner, and Duchy Trachtenberg voted in favor of the bill.⁶¹

Table 9-7. Key Dates for Expedited Bill 2-07

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|-----------------------|---|--------------------------|----------------------------|--------------------|
| Jan. 16, 2007 | Feb. 6, 2007 | MFP Committee Feb. 12, 2007 | Feb. 27, 2007 | March 12, 2007 | March 12, 2007 |
| Bill Sponsored By: | | Council President at the request of County Executive Duncan ⁶² | | | |

⁵⁶ 11-7-06 Memorandum from Douglas Duncan, County Executive, to Council President George Leventhal.

⁵⁷ 11-7-06 Memorandum from Douglas Duncan, County Executive, to Council President George Leventhal.

⁵⁸ 2-12-07 MFP Committee Minutes at p. 2.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ 2-27-07 Council Legislative Minutes at p. 1.

⁶² County Executive Douglas Duncan requested that the Council introduce Bill 2-07 in November 2006, before he left office in December 2006. The Council introduced the bill in January 2007, when Isiah Leggett was County Executive.

CHAPTER X. Bills Amending the “Meet and Confer” Law on Compensation Issues

From 1978 to 1983, the Council passed four bills that concerned annual compensation adjustments and maximum salary levels for Montgomery County employees. These bills were enacted as amendments to the County’s “Meet and Confer” law. In 1986, the Council adopted the County Collective Bargaining law, which repealed this compensation-related section of the “Meet and Confer” law.¹

This chapter briefly describes the history of these four bills and is organized as follows:

- **Section I, Cost-of-Living Adjustments -- Bill 37-78**, describes the first piece of legislation, which established an annual cost-of-living adjustment for Montgomery County employees; and
- **Section II, Other Compensation-Related Bills adopted in 1981, 1982, and 1983**, describes the three bills that established maximum salary levels for certain County Government employees.

The following tables identify the key dates for these bills.

Table 10-1. Key Dates for Bill 37-78

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--|-------------------|---------------------|---------------|
| July 18, 1978 | Aug. 31, 1978 | Sept. 25, 1978 | Nov. 17, 1978 | Returned Unsigned | Feb. 14, 1979 |
| Bill Sponsored By: | | Council President at the Request of County Executive Gleason | | | |

Table 10-2. Key Dates for Emergency Bill 16-81

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--|-------------------|---------------------|--------------|
| March 10, 1981 | April 8, 1981 | May 11, 1981 | May 15, 1981 | May 15, 1981 | May 15, 1981 |
| Bill Sponsored By: | | Council President at the Request of County Executive Gilchrist | | | |

Table 10-3. Key Dates for Bill 3-82

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--|-------------------|---------------------|---------------|
| Feb. 9, 1982 | March 17, 1982 | None | March 30, 1982 | March 31, 1982 | June 30, 1982 |
| Bill Sponsored By: | | Council President at the Request of County Executive Gilchrist | | | |

¹ Final Bill 19-86, § 33-74(d).

Table 10-4. Key Dates for Emergency Bill 13-83

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|----------------|--|-------------------|---------------------|----------------|
| March 1, 1983 | March 22, 1983 | Personnel Committee March 24, 1983 | April 5, 1983 | April 18, 1983 | April 18, 1983 |
| Bill Sponsored By: | | Council President at the Request of County Executive Gilchrist | | | |

I. COST-OF-LIVING ADJUSTMENTS -- BILL 37-78

Bill 37-78 arose out of a comprehensive proposal by the Chief Administrative Officer William Hussmann in May 1978 to revise the pay plan for Montgomery County employees.² In particular, Mr. Hussmann's plan recommended three major changes:

- Reducing annual increment adjustments for employees from 5 percent to 2 percent;
- Eliminating longevity increments in order to extend the range of pay; and
- Adjusting the pay plan annually by an amount not less than 75 percent of the Consumer Price Index (CPI).³

At the request of County Executive James Gleason, the Council introduced Bill 37-78 on July 18, 1978. Bill 37-78, as introduced, required the Chief Administrative Officer to:

[A]djust the uniform salary plan for all classified employees of the Montgomery County Government beginning the first pay period on or after July 1, of each year by an amount not less than seventy-five percent (75%) of the change in the Consumer Price Index for All Urban Consumers in the Washington D.C. area.⁴

The bill also stated that the law would not prohibit the Chief Administrative Officer (CAO) from adjusting the salary plan by more than 75 percent of the CPI "provided funds are available and approved by the County Council for such purpose."⁵

In May 1987, the Council passed a resolution endorsing the CAO Hussmann's proposal and stating:

BE IT FURTHER RESOLVED that it shall be the policy of the Montgomery County government, effective July 1, 1979, to adjust annually the uniform salary plan for all classified employees of the merit system of the Montgomery County government based on not less than seventy-five percent (75%) of the November Consumer Price Index

BE IT FURTHER RESOLVED that the County Council requests the County Executive to submit legislation for its consideration to provide by local law for the implementation of the policy with regard to the annual uniform salary plan adjustment as aforementioned.⁶

² 8-31-78 Written Public Hearing Testimony of William Hussmann, Chief Administrative Officer at p. 1.

³ 8-31-78 Written Public Hearing Testimony of William Hussmann, Chief Administrative Officer at p. 1.

⁴ Bill 37-78 Executive Draft, § 33-74.

⁵ Ibid.

⁶ Council Resolution 8-1935 (May 9, 1978).

The Council considered Bill 37-78 in its November 14, 1978 legislative session and had a lengthy discussion of the Council's authority to enact the legislation, as worded.⁷ Councilmembers expressed concern that the language in the bill, as drafted, would mandate the CAO to adjust the uniform salary plan, regardless of whether the Council funded the adjustment in the annual budget.⁸

On November 14th, before enacting the bill, the Council amended the language in the bill to make the salary plan adjustment contingent on the Council appropriating sufficient funds. Councilmembers William Colman, Esther Gelman, John Menke, and Neal Potter voted in favor of the bill; Council President Elizabeth Scull voted against the bill; and Councilmembers Dickran Hovsepian and Jane Ann Moore were absent.⁹

On November 15th, County Executive James Gleason sent Council President Elizabeth Scull a memorandum expressing "shock" at the Council's removal of "any guarantee to the employees of the County Government of an essential part of our overall compensation policies."¹⁰ Citing the Council's May 1978 resolution and the components of the proposal to revise the County Government pay plan, County Executive Gleason asserted that:

To include the limiting language making such adjustment subject to availability of funds seem to me to be an unnecessary diminishment of the stated policy of the County Government and seriously jeopardizes the other segments of a comprehensive pay policy.¹¹

County Executive Gleason "strongly request[ed] and implore[d]" the Council to reconsider their amendment to Bill 37-78, stating his intention to veto the bill "since this administration cannot be a party to violating an implicit promise made to all our County employees."¹²

On November 17th, the Council reconsidered their action on Bill 37-78 in a legislative session. After a lengthy discussion, the Council amended and reenacted Bill 37-78.¹³ On a motion from Councilmember Menke, the Council added language that placed priority on full funding of the cost-of-living adjustment and added a requirement for the Council to provide reasons if they did not fully fund the COLA at 75 percent of the Consumer Price Index.¹⁴ The final language in adopted Bill 37-78 read as follows:

The County Executive shall provide as a part of the annual recommended operating budget for the County Government sufficient funds to implement the cost-of-living adjustment required by this Section. The Council shall accord one of the highest priorities to the full funding of the cost-of-living adjustment, shall fund fully the 75 percent of Consumer Price Index cost-of-living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which

⁷ 11-14-78 Council Legislative Minutes at p. 2360-2368.

⁸ 11-14-78 Council Legislative Minutes at p. 2360-2361.

⁹ 11-14-78 Council Legislative Minutes at p. 2368.

¹⁰ 11-15-78 Memorandum of Understanding from James Gleason, County Executive, to Council President Elizabeth Scull at p. 1 [hereinafter "11-15-78 Gleason Memo"].

¹¹ 11-15-78 Gleason Memo at p. 2.

¹² Ibid.

¹³ 11-17-78 Council Legislative Minutes at p. 2393-2394.

¹⁴ Ibid.

full funding is achieved. Unless otherwise provided in the approved budget resolution which includes a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to County Government employees, the Chief Administrative Officer shall adjust the uniform salary plan for all classified employees of the Montgomery County Government beginning the first pay period on or after July 1 of each year by an amount not less than seventy-five percent (75%) of the change in the Consumer Price Index for All Urban Consumers in the Washington D.C. area¹⁵

County Executive Gleason returned the bill to the Council unsigned. On February 14, 1979, Bill 37-78 went into effect without the Executive's signature.¹⁶

II. OTHER COMPENSATION-RELATED BILLS ADOPTED IN 1981, 1982, AND 1983

In 1980, an "Ad Hoc Committee on Top Level Salaries" (also referred to as the Colman Committee) reported on the competitiveness of salaries of top level employees in the County Government.¹⁷ The Colman Committee found that "over time ... salaries earned in certain positions would exceed considerably those of other comparable organizations."¹⁸

In response to the Colman Committee's finding, County Executive Charles Gilchrist established a task force to "examine longer-range alternatives to the present compensation system for these County positions" and proposed legislation to address top level employee salaries in FY82.¹⁹ On March 10, 1981, at the request of the County Executive, the Council introduced Bill 16-81. Among other things, the legislation:

- Adjusted the maximum salary for grades 5 through 31 upwards equal to the approved FY82 cost-of-living adjustment; and
- Capped the maximum salary for employees in grade 40 at \$62,000, "with equal dollar difference between the maxima for grades 31 through 40."²⁰

At the Council's May 15, 1981 legislative session, the Council approved an amendment offered by Councilmember Crenca that increased the maximum salary for employees in grade 40 to \$70,000 and required that "no employee's salary is to be reduced below its level as of June 30, 1981 as a result of the implementation of" the legislation.²¹

The Council enacted Bill 16-81 on May 15th. Councilmembers Rose Crenca, Scott Fosler, Esther Gelman, Michael Gudis, Neal Potter, and Ruth Spector voted in favor of the bill and Councilmember Elizabeth Scull was absent.

¹⁵ Final Bill 37-78, § 33-74.

¹⁶ See 11-29-78 Memorandum from James Gleason, County Executive to Council President Elizabeth Scull.

¹⁷ 2-13-81 Memorandum from Charles Gilchrist, County Executive, to County Council at p. 1 [hereinafter "2-13-81 Gilchrist Memo"].

¹⁸ 2-13-81 Gilchrist Memo at p. 1.

¹⁹ 2-13-81 Gilchrist Memo at p. 1.

²⁰ 2-13-81 Gilchrist Memo at p. 1.

²¹ 5-15-81 Council Legislative Minutes at p. 3432.

Subsequent Bills. In 1982 and 1983, the Council enacted bills that amended the maximum salary provisions that had been put in place by Bill 16-81. In February 1982, County Executive Gilchrist sent the report of the Management Compensation Task Force and his proposed FY83 salary policy to the Council.²² The accompanying legislation – Bill 3-82 – maintained the maximum salary for grade 40 at \$70,000 and established a new mechanism to determine the maximum salary levels for grades 32 through 39.²³ The Council enacted Bill 3-82 on March 30, 1982. Councilmembers Rose Crenca, Michael Gudis, Neal Potter, and Ruth Spector voted in favor of the bill; Councilmembers Elizabeth Scull and Esther Gelman voted against the bill; and Councilmember Scott Fosler was absent.²⁴

In 1983, the Council enacted Bill 13-83.²⁵ Bill 13-83 capped the maximum salary for grades 38, 39, and 40 at \$68,000, \$69,000, and \$70,000, respectively.²⁶ The salaries for all other grades in the merit system were adjusted by the cost-of-living adjustment approved by the Council.²⁷ Councilmembers Esther Gelman, Michael Gudis, William Hanna, Neal Potter, and David Scull voted in favor of the bill; Councilmember Scott Fosler voted against the bill; and Councilmember Rose Crenca was absent.²⁸

Repeal of Section 33-74. In 1986, the Council adopted the County Collective Bargaining law (Bill 19-86). This legislation repealed the compensation-related section of the “Meet and Confer” law “upon certification that the County merit system employees in the units established under Article VII are represented for the purpose of collective bargaining under Article VII of this Chapter.”²⁹

²² 2-2-82 Memorandum from Charles Gilchrist, County Executive, to Council President Neal Potter [hereinafter “2-2-82 Gilchrist Memo”].

²³ See Attachment to 2-2-82 Gilchrist Memo; see also Final Bill 3-82, § 33-74(b).

²⁴ 3-30-82 Council Legislative Minutes at p. 3847.

²⁵ See 4-5-83 Council Legislative Minutes at p. 4411.

²⁶ Final Bill 13-83, § 33-74(b)(2).

²⁷ Final Bill 13-83, § 33-74(b)(3).

²⁸ Ibid.

²⁹ Final Bill 19-86, § 33-74(d).

CHAPTER XI. Bills Making Technical Changes to Names and Duties

This chapter summarizes two bills that made technical changes to the “Meet and Confer” law and to the County Collective Bargaining law and is organized as follows:

- **Section I**, Changing the Name and Duties of the Personnel Board – Emergency Bill 18-81; and
- **Section II**, Changing the Name of the Personnel Office – Emergency Bill 19-94.

I. CHANGING THE NAME AND DUTIES OF THE PERSONNEL BOARD – EMERGENCY BILL 18-81

Bill 18-81, enacted on December 1, 1981, changed the name of the County’s Personnel Board to the Merit System Protection Board and transferred authority to promulgate County regulations from the Board to the County Executive.¹ At the time Bill 18-81 was enacted in 1981, the County’s “Meet and Confer” law was in effect.

Bill 18-81 changed two references in the “Meet and Confer” law from “county personnel board” to “Merit System Protection Board.”²

The Council unanimously voted (7-0) to enact Bill 18-81. The Councilmembers at the time were Rose Crenca, Scott Fosler, Esther Gelman, Michael Gudis, Neal Potter, David Scull, and Ruth Spector.

Table 11-1. Key Dates for Bill 18-81

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|-----------------------|--|--------------------------|----------------------------|--------------------|
| April 21, 1981 | June 23, 1981 | Sept. 4, 1981 Oct. 6, 1981 Nov. 3, 1981 Nov. 13, 1981 | Dec. 1, 1981 | Dec. 10, 1981 | Dec. 10, 1981 |
| Bill Sponsored By: | | Council President Spector | | | |

II. CHANGING THE NAME OF THE PERSONNEL OFFICE – EMERGENCY BILL 19-94

Bill 19-94, enacted on July 5, 1994, changed the name of the Personnel Office to the Office of Human Resources.³ Bill 19-94 changed one reference in the County Government collective bargaining law from “personnel office” to “office of human resources.”⁴

¹ See Final Bill 18-81, description.

² See Ibid. §§ 33-63(c); 33-71.

³ See Final Bill 19-94, description.

⁴ See Ibid. § 33-102(4)(k).

The Council unanimously voted (9-0) to enact Bill 19-94. The Councilmembers at the time were Bruce Adams, Derick Berlage, Nancy Dacek, Gail Ewing, William Hanna, Betty Ann Krahne, Isiah Leggett, Marilyn Praisner, and Michael Subin.

Table 11-2. Key Dates for Bill 19-94

| Introduction | Public Hearing | Worksessions | Passed by Council | Signed by Executive | Took Effect |
|---------------------------|-----------------------|---|--------------------------|----------------------------|--------------------|
| June 21, 1994 | July 5, 1994 | None | July 5, 1994 | July 13, 1994 | July 13, 1994 |
| Bill Sponsored By: | | Council President at the request of County Executive Potter, and Councilmember Praisner | | | |

CHAPTER XII. Bills Introduced, but not Enacted, by the Council

Between 1985 and 2006, the Council introduced, but did not enact, several bills that would have amended the County's collective bargaining laws. This chapter briefly describes these bills.

I. BILL 9-85, COLLECTIVE BARGAINING FOR POLICE SERGEANTS

The Council introduced Bill 9-85 on March 19, 1985; the bill was sponsored by Councilmember Esther Gelman.¹ The bill would have given police sergeants collective bargaining rights and created a separate collective bargaining unit for sergeants under the Police Labor Relations act.

At the same time the Council introduced Bill 9-85, it submitted the bill to the Compensation Task Force for consideration.² The bill file does not indicate the disposition of the bill after it was referred to the Task Force.

II. BILL 2-88, COLLECTIVE BARGAINING - PENSIONS

The Council introduced Bill 2-88 on January 19, 1988; the bill was sponsored by Councilmember William Hanna.³ The bill would have removed pension and retirement benefits as mandatory subjects for collective bargaining under both the Police Labor Relations law and the County Collective Bargaining Law.

The Personnel Committee reviewed the legislation before the Council introduced it and voted (2-1) against approval of the bill and "agreed to bring the bill before the Council with a negative Committee recommendation."⁴ The bill file does not indicate the final disposition of Bill 2-88.

III. BILL 29-94, COLLECTIVE BARGAINING – FIRE/RESCUE UNIT – IMPASSE RESOLUTION

The Council introduced Bill 29-94 on July 26, 1994; the bill was sponsored by Councilmember Leggett.⁵ Bill 29-94 would have revised the impasse resolution process – establishing binding arbitration – for only the firefighter's collective bargaining unit under the County Collective Bargaining law.

A January 1995 letter from Landon Pippin, President of the Montgomery County Career Fire Fighters Association, states that the Association had reached an agreement with County Executive Douglas Duncan to:

¹ 3-19-85 Memorandum from Myriam Marquez Bailey, Senior Attorney, to County Council at p. 1.

² 3-19-85 Council Legislative Minutes at p. 5515.

³ 1-19-88 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1.

⁴ 12-7-87 Personnel Committee Minutes at p. 2.

⁵ 7-22-94 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1.

Forgo binding arbitration for this current bargaining cycle in favor of working together to formulate a completely separate and more comprehensive bargaining law for fire fighters.... For this reason, I request that Bill 29-94 be set aside pending what I expect to be a join submission for amendment by Mr. Duncan and Local 1664.⁶

As a result of the agreement, Bill 29-94 was never scheduled for full Council consideration.

IV. BILL 45-97, COLLECTIVE BARGAINING AMENDMENTS

The Council introduced Bill 45-97 on December 9, 1997; the bill was sponsored by Councilmembers Leggett, Berlage, Gail Ewing and Subin.⁷ Among other things, the bill would have:

- Required binding arbitration of collective bargaining agreements for County Government employees;
- Required the County to bargain with employee representatives before contracting with private parties to provide certain services or assume certain functions; and
- Repealed the provisions governing the Council's role in the mediation/fact-finding process.⁸

The Management and Fiscal Policy Committee unanimously recommended disapproval of Bill 45-97 because Councilmembers Praisner, Hanna, and Potter did not support extending binding arbitration to non-public safety employees.⁹ The Council disapproved the bill on August 4, 1998.¹⁰ Councilmembers Gail Ewing, Michael Subin, and Isiah Leggett voted in favor of the bill; Councilmembers Nancy Dacek, William Hanna, Betty Ann Krahne, Neal Potter, and Marilyn Praisner voted in opposition to the bill; and Councilmember Derick Berlage was absent.¹¹

V. Bill 2-06, Collective Bargaining – County Employees – Fact Finding

The Council introduced Bill 2-06 on February 7, 2006; the bill was sponsored by the Council President at the request of County Executive Douglas Duncan. The packet prepared by Council staff stated that Bill 2-06 would have:

Insert[ed] issue-by-issue fact-finding as an interim step before the Executive and the County employees' union submit their final offers on unresolved issues to the mediator/arbitrator. In Council staff's view this change would move the collective bargaining process from the current last-best-offer, total package arbitration much closer to issue-by-issue arbitration, which the County government has previously resisted.¹²

Bill 2-06 was never scheduled for full Council action. The information in the bill file does not indicate the reason the Council did not further consider the bill.

⁶ 1-11-95 Letter from Landon Pippin, President of the Montgomery County Career Fire Fighters Association to Councilmember Isiah Leggett.

⁷ 12-9-97 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1.

⁸ Ibid.

⁹ 7-30-98 MFP Committee Minutes at p. 3.

¹⁰ 8-4-98 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1; 8-4-98 Council Legislative Minutes at p. 28.

¹¹ 8-4-98 Council Legislative Minutes at p. 28.

¹² 2-7-06 Memorandum from Michael Faden, Senior Legislative Attorney, to County Council at p. 1.